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A Review and Evaluation of the State of Rhode Island Coastal Resources Management Program

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A REVIEW AND EVALUATION OF THE
STATE OF RHODE ISLAND
COASTAL RESOURCES MANAGEMENT PROGRAM

BY

LEE R. WHITAKER

A RESEARCH PROJECT SUBMITTED IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF
COMMUNITY PLANNING

UNIVERSITY OF RHODE ISLAND

1981

MASTER OF COMMUNITY PLANNING

RESEARCH PROJECT

OF

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APPROVED:

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ABSTRACT

The Rhode Island Coastal Resources Management Program is entering its second decade. Created by the Rhode Island General Assembly on 1971, the Coastal Resources Management Council adopted in 1977 a management program that was approved by the Federal Office of Coastal Zone Management in May, 1978. The state has been receiving \$1 million annually in federal aid, matched by nearly a quarter of a million dollars in state funds, to implement its Coastal Management Program.

The Rhode Island Program has been intensely examined during the past nine years by federal evaluators, environmental groups, and in-house program consultants. These evaluations have directed sharp criticism toward the Council and its management program. Program administrators and the Council have successfully deflected criticism and have argued that the Program has had a beneficial effect on the state's coastal region.

This research project traces the historical context of the Rhode Island Coastal Resources Management Program and analyzes, through its case load, its decision-making environment and its management program. The major program weaknesses are revealed as: (1) a program that has not developed a management plan that is suitably tailored to the diverse resource base; (2) a program that has not developed and adopted development standards and decision-making criteria tailored to fit permissible uses; and (3) a program that retains a large amount of Council discretion in the decision-making process, which, if unchecked (by a failure

to remedy the first two weaknesses), will continually deliver to Rhode Islanders a costly and difficult-to-administer program whose only consistency is its inconsistency with its own management document.

Hsui Lao shih Ch'u

(The rock is bound to emerge as the tide subsides.)

- Chinese Proverb

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More than a thank you or an expression of gratitude is due to Mr. Daniel W. Varin, Chief of the Rhode Island Office of State Planning, who encourages all to practice planning with the highest professional standards. His example has been invaluable over the past eight years, and he also served on the review board for this project, offering his personal insight into the issues.

This project would have been impossible to successfully complete without the cooperation and assistance of Mr. Frank P. Geremia, Assistant Director of Operations at the Rhode Island Department of Environmental Management. And a thank you of unqualified proportions is offered to Ms. Carol Ciotola who skillfully typed the drafts and finished manuscript.

No measure of appreciation is large enough to reflect the value of the patience and support of my wife, Linda Rose, and our daughter, Alexandra.

Lee R. Whitaker

University of Rhode Island

May, 1981

TABLE OF CONTENTS

	<u>PAGE</u>
Abstract	1
Acknowledgements.....	iii
Table of Contents.....	v
List of Acronyms.....	viii
List of Tables.....	ix
Introduction: Project Description, Purpose and Format.....	1
Chapter One: Development of the Federal Coastal Zone Manage- Act and the Federal Requirements for Coastal Management Programs.....	7
A. The Stratton Commission: Framework for Coastal Zone Management.....	7
B. The Coastal Zone Management Act of 1972: Realities of Implementation.....	10
1. A Matter of Control.....	10
2. The Shifting Federal Target Syndrome.....	14
Chapter Two: Development Evolution of the Rhode Island Coastal Resources Management Program.....	23
A. Summary of Early State Efforts.....	23
B. The Governor's Committee on the Coastal Zone, 1969: A State Focus.....	24
C. The Expanded Committee, 1970: The Shift to the Local Focus.....	30
D. The Program Prospectus: A Guide for the Crucial First Step.....	33
E. Coastal Resources Management: The Shake- down Period.....	35

TABLE OF CONTENTS (Con't)

	<u>PAGE</u>
Chapter Three: The Decision-Making Process of the Rhode Island Coastal Resources Manage- ment Program.....	44
A. Process Description.....	44
B. Permit Processing.....	54
C. Letters of No Objection.....	63
D. Cease and Desist Orders.....	65
E. Public Hearings.....	76
F. CRMC Project Denials.....	79
G. Conclusions on <u>RICRMP</u> Implementation Based on Caseload Analysis.....	98
1. "Landside" Implementation: Program Impact.....	98
2. Programmatic Deviation and Inconsis- tencies: Three Examples:	
a. Central Barrier Beach: Geographic Area of Particular Concern.....	101
b. Conservation/Low Intensity Use Coastal Waters.....	106
c. Coast Guard Barrier Beach: Geo- graphic Area of Particular Concern.....	109
3. Areas for Preservation and Restoration: Case Study of the Pettaquamscutt River, Programmatic Failure.....	115
H. Reflections on the NRDC Report on the Rhode Island Coastal Program, 1976.....	132
I. Assessment of the Effect of OCZM as a Policy Source on Program Development and Implemen- tation.....	141
J. Internal Perception of the CRMC's Mission: 1972 V. 1981.....	149

TABLE OF CONTENTS (Con't)

	<u>PAGE</u>
Chapter Four: Findings and Recommendations.....	167
A. Jurisdiction and Control.....	167
B. Overall Management Procedures.....	172
C. Organization.....	185
Epilogue.....	189
Bibliography.....	193
Appendix I: Rhode Island Coastal Resources Management Development Standards.....	I-1
Appendix II: Tabulated Project Data by Community, Waterbody and Project Type.....	II-1

ACRONYMS

- C & D's - Cease and Desist Orders issued by the Rhode Island Coastal Resources Management Council.
- CRMC - Rhode Island Coastal Resources Management Council.
- CZMA - Federal Coastal Zone Management Act of 1972, as amended.
- DEM - Rhode Island State Department of Environmental Management.
- DCE - Division of Coastal Resources in the Rhode Island State Department of Environmental Management.
- DOC - United States Department of Commerce.
- GAO - United States Government Accounting Office.
- ISDS - Individual Sewage Disposal System.
- LNO's - Letters of No Objection issued by the Rhode Island Coastal Resources Management Council.
- NEPA - National Environmental Policy Act.
- NOAA - National Oceanic and Atmospheric Administration, United States Department of Commerce, parent of the Office of Coastal Zone Management.
- NPRA - Narragansett River Preservation Association, Inc.
- NRDC - Natural Resources Defense Council, Inc.
- OCZM - Federal Office of Coastal Zone Management, Administering Agency of the Federal Coastal Zone Management Act.
- RICRMP - State of Rhode Island Coastal Resources Management Program.
- SFDU - Single-Family Dwelling Unit.

LIST OF TABLES

PAGE

1. 1980 CRMC Workloads: Applications Reviewed Results of
Moving to two Meetings per Month.....
2. Time Periods for Case Processing.....
3. Inventory of Letters of No Objection, July, 1979 -
August, 1980.....
4. Inventory of Cease and Desist Orders/Orders to Remove and
Restore, January, 1980 -
August, 1980.....
5. Applications Resulting from Cease and Desist Orders,
December, 1979 - October, 1980.....
6. Public Hearings on Applications from December, 1979, -
November, 1980.....
7. Major Cases Out to Public Hearing During Sample Period,
December, 1979 - November, 1980.....
8. Categorization of all Cases out to Public Hearing During
Sample Period, December, 1979 -
November, 1980.....
9. Estimated Costs for a Public Hearing.....
10. CRMC Project Denials.....
11. Partial List of Assents for Structures in Barrington River
Since 1979.....
12. Projects on Barrier Beaches Before the CRMC for Full 30-Day
Notice, December, 1979, to April,
1981.....
13. Pettaquamscutt River Development Projects Since 1977.....
14. 1977 Cases with Major Comment/Objection from Statewide
Planning Program.....
15. 1977 Cases with Major Biological and/or Engineering Com-
ment/Objection.....
16. Summary of Issues Raised at Beginning of CRMC's Workshop,
Faculty Center, URI, November 29, 1972.

LIST OF TABLES (Con't)

PAGE

II-1. Projects Before CRMC by Coastal Waterbody.....	
II-2. Tabulated Findings for Project Locations.....	
II-3. CRMC Applications by Project Type and Community, November, 1979 - December, 1980.....	
II-4. CRMC Applications by Project Type and Waterbody, November, 1979 - December, 1980.....	

INTRODUCTION

The Official news organ of the Planning profession recently reported that regulatory efficiency has become a high-priority item during the past three years for some planning agencies as they have been working to produce more efficient methods of protecting the environment while still accommodating growth.¹ This is not a surprising development following the decade of enacting environmental legislation at the state and national level. Business in formulating comprehensive environmental legislation was especially brisk in the early 70's with the birth of NEPA and a wide range of state and federal enactments from Hawaii's Land Use law to the national Coastal Zone Management Act of 1972. Little new activity in this realm has occurred since the 1975 failure of Congress to enact national land use legislation.²

Rhode Island was in step with, if not ahead, of the pack in 1971, when the state's General Assembly enacted the Coastal Resources Management Act a year before Congress launched the National Coastal Zone Management Program. Comprehensive land management legislation was similarly developing at the state and national levels when the process collapsed in the United States Congress. The atmosphere at the Rhode Island state level nearly sustained the impetus for land management in 1976, but the momentum has lagged in subsequent General Assembly sessions.

In spite of the change in the tenor of the times, interest in Coastal Zone Management remains strong at the state and national levels.³

The federal program and the state programs it spawned are closely

watched and their efforts regularly gauged by a host of monitors from GAO to professional environmentalists.

In keeping with the spirit of professionals who engage in monitoring and evaluation of programs to create more efficient regulatory processes and to measure their effectiveness, this report examines the Rhode Island Coastal Resources Management Program's (RICRMP) effectiveness. It does this by examining the course charted by state and federal legislative mandates and utilizes a program review and evaluation approach that compares that course with the progress of the state's program as it is actually implemented.

The first question, indeed the paramount question, is, "Does the program result in benefits to society?" The answer to this question shall be obtained by measuring the program's operational results against goals and objectives. These operational measurements will be evaluated to determine the program's overall efficiency in delivering the intended results and to determine if there are unintended impacts. The real world consequences of the program are, therefore, the subject matter here; and they will be evaluated in terms of products and the costs incurred. If the program is determined to be less effective and less efficient than would be desirable, the programmatic theory and the process roots of these shortcomings will be revealed.⁴ Translated into everyday language, the question becomes, "What difference does the Rhode Island Coastal Resources Management Program (RICRMP) make in the Coastal Region?"

This report begins with an explanation of the historical context of federal and state coastal zone management and the resultant management

programs or program process criteria that evolved at those governmental levels. This context is crucial because it reveals the forces that shaped the present state program. The analysis then proceeds through the RICRMP document to discern the adopted decision-making criteria and the process devised to adhere these criteria to proposals for development in the state's Coastal Region. The third step follows with the evaluation of the case-load typology and the results of the management process. The report concludes with a section of findings and recommendations, including options for changes to the Legislation, the RICRMP, and the management process.

This format is consistent with what Theodore Poister has labeled as a growing tendency to link studies of program process with program impacts in the "feed-back loop" of monitoring and evaluation.⁵ Such a feed-back loop has been absent from the Rhode Island Program for the nine years of its existence. Some small attempts at measuring the program's inputs and outputs were made during the preparation of the State of Rhode Island Coastal Resources Management Program,⁶ and more recent efforts have been comprised of two annual federal evaluations as mandated by Section 312 (CZMA) and a state review of procedure by an "outside consultant" hired with the U.S. Environmental Protection Agency and Federal Office of Coastal Zone Management funds.⁷ The most significant evaluation was prepared by a consortium of environmental groups in 1976 as a comment on the initial Management Program submitted to the Office of Coastal Zone Management for federal approval.⁸ That evaluation found glaring deficiencies in the Management Program and recommended major changes. Rhode Island then required another two years to create a

management program. No evaluation has been internally generated by state program personnel, however, and this report is an effort to initiate the feed-back loop and supply the Program with the necessary data base and evaluation.⁹

No attempt is made to evaluate the Rhode Island Coastal Management Program with respect to sections of the Federal Coastal Zone Management Act other than Section 306. Decisions made vis-a-vis other sections of the Act must be in conformance with the Section 306 Management Program and are handled through the management process established therein.

FOOTNOTES TO INTRODUCTION

1. American Planning Association, "Research Digest," Planning, Vol. 46, No. 9, (September, 1980), p. 24.
2. Daniel R. Mandelker, "Symposium: Law and Planning in the Environmental Decade," Journal of the American Planning Association, Vol. 46, No. 2, (April, 1980), p. 133.
3. Although the Reagan Administration has targeted the Coastal Management Program for total federal phase-out within the next fiscal year, this budget issue will be decided within the context of the revolutionary budgetary approach currently espoused in Washington, D.C.
4. Theodore H. Poister, Public Program Analysis: Applied Research Methods. (Baltimore: University of Park Press, 1978), pp. 9-11, 55, and 56.
5. Ibid., pp. 8-9.
6. State of Rhode Island Coastal Resources Management Program: March 14, 1978, (Providence, Rhode Island: Rhode Island Coastal Resources Management Council, 1978), pp. i-vi.
7. Malcolm J. Grant, "Procedural Evaluation of the Rhode Island Coastal Resources Management Program: Recommended Improvements," (Hope Valley, Rhode Island: Resources Management Systems, Inc., February, 1980).

Office of Coastal Zone Management, Evaluation of the Rhode Island Coastal Management Program for the Grant Period from January 1, 1979, to December 31, 1979. (Washington, D.C.: Office of Coastal Zone Management, June 6, 1980).

Office of Coastal Zone Management, Section 312 Findings, Evaluation of the Rhode Island Coastal Management Program covering the Grant Period May, 1978, - February, 1979, (Washington, D.C.: Office of Coastal Zone Management, April 19, 1979).

8. Richard Brooks and Kenneth Payne, et. al., "Presentation of Audubon Society of Rhode Island; the Natural Resources Defense Council, Inc.; Ecology Action for Rhode Island, Inc.; Conservation Law Foundation of Rhode Island; American Littoral Society, Inc.," Before the Rhode Island Coastal Resources Management Council, July 26, 1976, State House, Rhode Island.
9. There is an item in the Rhode Island Work Program for FY 1980-81 for the University of Rhode Island, Coastal Resources Center (CRC) to conduct a program review and prepare regulation refinements. The CRC effort has resulted in modifications to the RICRMP which are the first to the Program since its adoption. The CRC's effort is

drawing upon the same data base as this project; and, in fact, there is some considerable material drawn from this work and supplied to the CRC. However, the CRC effort is not akin to a monitoring and evaluation process, nor will it establish a feedback loop. In fact, the need for on-going internalized data generating monitoring and evaluation system is highlighted by the CRC's effort which must rely on Marine Resources Specialists with little or no hands-on-experience with the RICRMP and who are totally dependent upon operations personnel for information and data.

All the higher, more penetrating ideals are revolutionary. They present themselves far less in the guise of effects of past experience than in that of probable causes of future experience, factors to which the environment and the lessons it has so far taught us must learn to bend.

- William James

CHAPTER ONE: DEVELOPMENT OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT
AND THE FEDERAL REQUIREMENTS FOR COASTAL MANAGEMENT
PROGRAMS.

A. The Stratton Commission: Framework for Coastal Zone Management.

The national effort to devise a mechanism for better management of marine resources was officially launched in June, 1966, with the enactment of Public Law 89-454 which established the Commission on Marine Science, Engineering, and Resources. Known as the Stratton Commission, after its Chairman, Dr. Julius Stratton of the Ford Foundation, the 15-member investigative team, was charged "to examine the nation's stake in the development, utilization, and preservation of our marine environment...formulate a comprehensive, long-term national program for marine affairs, (and)...recommend a plan of government organization to implement the Program."¹

Two years of effort by that Commission resulted in Our Nation and the Sea, a report which significantly noted the uniqueness and importance of the coastal zone for trade, industry, and biological productivity and which found the complexity of managing activities in this zone to have "outrun the abilities of the local governments who alone had the responsibilities for planning and developing resolutions to these problems."² In testimony given before the House Merchant Marine and Fisheries Conference on Coastal Zone Management, in October of 1969, Dr. John A. Knauss, Provost for Marine Affairs,

University of Rhode Island, and a prominent member of the Stratton Commission, emphasized the increasingly competitive nature of the uses of the Coastal Region resulting from population increases and shifts, societal affluence, and scale and types of activities ranging from recreation to energy production.³

Doctor Knauss emphasized a major conclusion of the Commission: "Effective management (of the coastal zone) to date has been thwarted by the variety of government jurisdictions involved at all levels of government, the low priority afforded to marine matters by state government, the diffusion of responsibility among State agencies, and the failure of state agencies to develop and implement long-range plans."⁴ To cope with this problem, Knauss reported that the Commission arrived at a second major conclusion: "that the management task was primarily a state responsibility and that the federal government should encourage the state to accept this responsibility."⁵ These statements are crucial to understanding the problems of Coastal Zone Management because they point to the issue of jurisdiction. That is, who will have the authority over what.

The Commission viewed the state role as crucial "to surmount special local interests, to assist local agencies in solving common problems, and to effect strong interstate cooperation."⁶ To accomplish its mission in the coastal zone, the state would require "sufficient planning and regulatory authority." Knauss confirmed that the Commission had not developed a prescription that each coastal state had to follow. Obviously, the special sets of circumstances within each state would

help to shape the management mechanism. It could be either a single-state authority or volunteer commission. In fact, the Commission realized the federal government could, at best, only serve up inducements for states to participate in such a scheme.⁷

Regardless of the specific shape of a particular state's management mechanism, the Commission believed its effectiveness would hinge on four specific powers. These were reported by Knauss to the House Conference as (1) Planning, (2) Regulation, (3) Acquisition and Eminent Domain, and (4) Development. These powers would enable the state to prepare comprehensive plans for coastal waters and their adjacent lands; manage through zoning, easements, licenses and permits and whatever other controls would be required to ensure development in conformance with the plan, including outright acquisition, if required, and development of such public facilities as beaches and marinas, and leasing lands and offshore lands.⁸ These findings and recommendations were to strongly influence the early efforts in Rhode Island.

A year after the Stratton Commission Report, a second nationally prominent publication was released by the U.S. Department of the Interior under the title of The National Estuary Study. Mandated by the Estuary Protection Act, Public Law 90-454, the report conveyed a picture of on-going destruction of the nation's estuary system, with the finding that:⁹

Estuaries are in jeopardy. They are being damaged, destroyed, and reduced in size at an accelerating rate by physical alteration and by pollution. They are favorite places for industry, which finds the land cheap, water transportation easy, and waste dis-

posal convenient. They are also favorite places for residential developers who find it exceedingly profitable to dredge and fill an estuary and thus destroy part of it in order to appeal to affluent Americans to live near the water in houses which are accessible by boat and automobile.

Following on the heels of these major reports was a series of legislative initiatives at the Congressional level to enact a National Coastal Zone Management Program.

B. The Coastal Zone Management Act of 1972: Realities of Implementation.

I. A Matter of Control.

In response to the Stratton Commission report, Senator Warren G. Magnuson introduced in August, 1969, legislation (S 2802) to create a Coastal Zone Management Program for the nation. Magnuson's legislation was followed by a plethora of Coastal Management proposals in the House of Representatives and the Senate.¹⁰ In all proposals, the definition of the area to be managed either posed or reflected problems with the landward line of demarcation, while there seemed to be little problem in establishing the furthest extent of the seaward boundary at the "landward extent of maritime influences."¹¹ Other legislation defined it as "not to exceed 20 miles inland where maritime influences exercise direct effect on the land."¹² Another definition was "that in close proximity and strongly influenced by the coastline."¹³ Efforts to enact coastal management legislation continued into 1971 when legislation was introduced by Senator Ernest F. Hollings (S 582) and by Senator John

Tower (S 638). Their legislation defined the inland boundary as the extent that the land was "influenced by the water."¹⁴

Definition of the boundary notwithstanding, all pieces of legislation, following the recommendations of the Stratton Commission, placed the management burden on the states with the flexibility to evolve their individual management programs. The day following the Hollings initiative with S 582, Senator Robert L. Byrd, introduced S 992 to create a land management mechanism for the nation, recognizing the coastal zone and estuaries as areas of critical environmental concern.¹⁵

As the legislation began to be reshaped, the coastal legislation's inland boundary needs changed. A flexible water-oriented definition appeared in S 3507: "Shorelands whose use had a direct and significant impact on the coastal water." The House companion to S 3507, H.R. 14146, stated the inland boundary was to include "only those shoreland areas the control of which is necessary to the effective management of the coastal water themselves."¹⁷ Both pieces were leaving the landside to be covered by the land management legislation. Responsibility for administering the coastal program was assigned to the National Oceanic and Atmospheric Administration in the U.S. Department of Commerce as recommended by the Stratton Commission. The Conference Committee Report on S 3507 and H.R. 14146 defined the inland boundary of the coastal zone to be "those lands which have a direct and significant impact upon the coastal water."¹⁸ This legislation passed and was signed into law on October 27, 1972, as Public Law 92-583, more than one year after the state of Rhode Island had enacted coastal management legislation.

The issues of authorities and the inland boundary are the two keys to understanding the problems of managing the activities of the Coastal Region. The Stratton Commission recommendations emphasized strong authorities to be implemented at the state level-- authorities so strong that the zoning mechanism was envisioned among other powerful tools, and while the CZMA did not utilize that term, it clearly required a landward orientation of a kind necessary to manage activities that have a direct and significant impact upon coastal waters. However, the Act is not specific in this regard, and relegated definitions and standards to the administrative rule-making process. It is clear that at the state level, implementation of concepts such as these could run aground stiff local opposition. Unless, of course, the necessary groundwork could be employed through public involvement/education, and a role was reserved for local governments whose jurisdiction was most strenuously threatened by strong state programs.

The May, 1975, Coastal Zone Management Workshop at Asilomar, California, was devoted to the theme "From Planning to Practice,"¹⁹ and there was a heavy emphasis on public participation. Speakers in the session included Donald Strauss of the American Arbitration Association; Dr. Niels Rorholm, Professor Of School Oceanography, University of Rhode Island; and the Honorable Burt Muhly, Mayor of Santa Cruz, California. Their message was clear. Local governments have succumbed to development pressures and have wrecked the coastline. The general citizenry are not involved in the decision-making process. Local government control results in fragmented

governance of the region. The majority of people are being manipulated by local governments while people who do participate in goal-setting and decision-making do so to attain specific ends. People do not trust the data provided by experts. Public participation in Coastal Zone Management is a necessary long-term process that is required to bring the public into contact with decision-making.

Muhly produced a lengthy slide presentation visually documenting the deterioration of the aesthetic and recreational values of the California Coastal Region; the shoreline in particular, as a result of purely local decision-making. Muhley's findings echo those expressed elsewhere by the early pioneers in coastal zone management. At the Third Annual New England Coastal Resources Management Conference in Durham, New Hampshire, in November, 1972, South Kingstown, Rhode Island, Town Councilman Walter Gray was reported to have placed heavy responsibility on local politicians for the woes of coastal resources. Local officials, he said, are "prone to proclaim their deep affection for our great natural resources and then bend like spaghetti when their votes stack us against some vested interest."²⁰ It is local officials who disparage and undermine the concept of statewide and regional coastal management and planning, and it is these local politicians who will continue to allow haphazard coastal development without restriction.²¹ However, neither Muhley's findings, nor Gray's acknowledgements, nor the strength of the Stratton Commission report taken separately or

together could sustain the efforts to create strong state programs. The CZMA places many burdens upon state programs to factor in diverse interests, and local governments have too much at stake to allow substantial state control over activities and uses within their political boundaries. This has had predictable results at the national and state levels.

2. The Shifting Federal Target Syndrome.

It was difficult enough for states to have to contend with the jealous prerogatives of local governments, but the plight of State Coastal Program Managers was exacerbated by the federal "carrot and stick."

Edward T. LaRoe, former Chief of the Florida Bureau of Coastal Zone Management and a former OCZM staff person, and Elizabeth Sheiry Roy have advanced documentation that the Federal Office of Coastal Zone Management has been inconsistent in its administration of the CZMA because it (OCZM) lacks explicit policies and standards—a feature compounded by the policy to keep flexible to allow individual states to develop programs suited to each state's unique political and cultural climate. The result of this form of administration has been the creation of a welter of state programs with varying emphasis on a wide range of targets. LaRoe and Roy state: "the review and approval of state programs has continued to be conducted on an ad hoc basis and has frequently been based upon the opinion of or interpretation by the regional coordinators."²² They add that

this lack of criteria has been felt at the state level by complicating the task of program managers trying to develop programs acceptable to their constituencies.²³

This characteristic of the federal end of the Coastal Zone Management Program has persisted through program development into program evaluation. The four principal OCZM criteria for program evaluation have been: (1) protection of significant natural resources; (2) more effective management of coastal development; (3) increasing access to the coast; and (4) increasing intergovernmental cooperation and coordination.²⁴ LaRoe and Roy make the points that these criteria are new; are not derived properly from the hortatory language of the CZMA, Sections 302 and 303; are not standardized; and regardless of how laudatory these criteria may be, they are symptomatic of continuing inconsistency which, when viewed collectively, show "that OCZM has applied inconsistent criteria based upon frequently nonexistent objectives."²⁵ Not surprisingly, there has been a drive nationally by the Coast Alliance, the Coastal States Organization, and others, to tighten up at the federal level because of the delays, disputes, and total failure of state programs resulting from the ever-shifting federal target.²⁶ This constant federal motion has severely affected the development and implementation of the Rhode Island Program.

The July 22, 1975, OCZM site visit at Newport, Rhode Island,²⁷ approximately one year after the state received its first Section 305 planning grant, illustrates the problems that resulted. State

coastal officials were instructed by Messers Robert Knecht, OCZM, Director, and Richard Gardiner, leading OCZM staff person, that five items were necessary for state program approval. First, the state was required to define its coastal zone; and to satisfy this requirement, the state could either put a line on a map or include the whole state; presumably the latter option was a result of the peculiar jurisdictional authorities of the Rhode Island Coastal Resources Act and the state's smallness.

Regardless of the definition of the zone, Knecht maintained that the requirement was "an operational definition," and coordination between regulatory agencies had to be spelled out. This became known as linkage or "networking" or as one wit at an Airlie, Virginia, CZM Workshop described it, "Knechtions." It was emphasized that the state had to have adequate control over land and water uses. Second, the state had to define the geographic areas of concern that were within the control of the state management program. Third, the state program was required to designate what priority of uses would be adopted in the Rhode Island Coastal Zone. This requirement was defined with an emphasis on permissible uses for the geographic areas of particular concern. The requirement was that permissible uses need only be defined rather than listed. Still, Gardiner believed this to be the core to a coastal management program. The fourth and fifth necessary features of an approvable management program were assurances that local governments could not restrict uses of a "regional benefit" and

that the state program could not restrict uses of a "national benefit."

When Rhode Island first received approval in March, 1974, for its program development grant, and became one of the first three recipients nationwide, it was commonly acknowledged that the state would receive approval of its management program within two years because Rhode Island had an excellent history in Coastal Zone Management, notably the 1971 Coastal Resources Management Act. So, at the conclusion of the July 22, 1975, site visit, euphoria reigned among State Coastal Resources Management Council members. They had been informed by OCZM's legal counsel that the Rhode Island legislation was among the best. All that remained, it seemed, was documentation of the five conditions.

The Office of Coastal Zone Management was caught nationally between the political realities of more than 30 coastal states and territories, its statutory mandate, and its administrative guidelines and regulations. In a well-intentioned effort to assist the states to prepare management programs, by perhaps attempting to comb through the grey areas created by the merging of local political realities and federal requirements, OCZM released, in early 1976, a set of seven "Threshold Papers."²⁹

These papers contained what OCZM believed to be the minimal acceptable standards that the states needed to meet for 306 approval. They were based on the regulations, but there were instances "by OCZM admission" where the regulations and the Threshold Papers were

not totally compatible.³⁰ Some states welcomed the attempt by OCZM to "elucidate" the minimum standards, but found them, in some cases, "to be confusing," and lacking in flexibility.³¹ Other states found them to provide excellent guidance.³² While for some states, the papers merely raised as many questions as they attempted to answer.³³

Enough confusion arose from the Threshold Papers to necessitate a New England and Mid-Atlantic States Program Directors meeting on January 23, 1976, at the World Trade Center. That meeting touched upon the various ways states were trying to cope with piecing together a program. New York saw the networking of existing regulatory programs on a realistic approach that recognized that "bold new legislation is impossible."³⁴ Dick Gardner of OCZM saw real approval problems coming in those states with little or no environmental legislation. He stated that sooner or later OCZM would be confronted with the half-a-loaf versus the whole-loaf problem.³⁵

Sara Chasis of the Natural Resources Defense Council, writing critically of the Coastal Management Act's progress through 1979, sustained the criticism of LaRoe and Roy. It is her conviction that "since commencement of the federal program, OCZM has continued to alter and revise the requirements for 306 (Management Program Grant) approval."³⁶ She attacked this feature of OCZM's administrative style as failing to insure protection of valuable coastal resources because "they place heavy emphasis on procedure rather than substance."³⁷

Based on this, one would perhaps not be surprised to learn that Rhode Island's Program approval did not occur until May 12, 1978, nearly three years after the Newport site visit. As it turned out, a fourth year of planning was allowed by amendment to the CZMA and later a fifth year to assist reluctant states as all experienced grave difficulties in defining boundaries, authorities, uses, geographic areas, uses of regional benefit and uses of national interest. In 1976, Knecht at Airlie, Virginia, related the "history" of the discovery of the Planet Pluto as analogous to the development of approvable coastal programs. Astronomers, he stated, hypothesized the planet's existence and had worked out the mathematical proofs prior to its actual sighting by telescope. So too, OCZM hypothesized, there were approvable state CZM programs (other than Washington State, which had received approval in 1975) out there waiting to be discovered. Based on what has followed, one wonders if Rhode Island's coastal telescope has been properly focused.

CHAPTER ONE: FOOTNOTES

1. The Library of Congress, Congressional Research Service, Legislative History of the Coastal Zone Management Act of 1972, as amended in 1974 and 1976, (Washington, DC: U.S. Government Printing Office: 1976), p. 10.
2. Ibid., p. 2.
3. Ibid., pp. 13, 14.
4. Ibid., p. 14.
5. Ibid., pp. 14, 15.
6. Ibid., p. 16.
7. Ibid., p. 15.
8. Ibid., p. 16.
9. Ibid., p. 3.
10. Ibid., p. 4.
11. Ibid.
12. Ibid.
13. Ibid.
14. Ibid., p. 5.
15. Ibid., p. 6.
16. Ibid., p. 7.
17. Ibid.
18. Ibid.
19. Lee R. Whitaker, Personal Notes, CZM Workshop, Asilomar, California, May 27-30, 1975.
20. The Providence Evening Bulletin, "Local Officials Scored on Shoreland Policies," November 1, 1972.
21. Ibid.

22. Edward T. LaRoe, and Elizabeth Sheiry Roy, "Federal Inconsistency: Administration of the CZMA in the Absence of Explicit Federal Policies and Standards," Resource Allocation Issues in the Coastal Environment, proceedings of the Coastal Society Fifth Annual Conference, (Arlington, Virginia: November 6-8, 1978), p. 11.
23. Ibid. This problem was especially acute in Rhode Island's Case when the state submitted a management program in June, 1976, expecting approval because it had been prepared in hand-in-glove fashion with OCZM personnel, but only to be badly received by that Office because of a critical analysis of the state's program by NRDC and others, setting the stage for two additional years of program preparation.
24. Ibid., p. 17.
25. Ibid., p. 21.
26. Ibid., p. 23. The 1980 Amendments to the CZMA appear to make an attempt at correcting this problem, but it is too soon to declare this attempt as effective or as a success.
27. Lee R. Whitaker, Personal Notes, Federal Office of the Coastal Zone Management Site Visit, Newport, Rhode Island, July 22, 1975.
28. These directions from OCZM were consistent with the statutory requirements of Public Law 92-583, the Coastal Zone Management Act of 1972, Section 305.(a) and the Administrative regulations, i.e., CFR Part 920.11 through 920.15 in Federal Register Vol. 42, No. 83, April 29, 1977, pp. 22042-22044.
29. Office of Coastal Zone Management, "Threshold Paper No. 1: Boundaries;" "Threshold Paper No. 3: Geographic Areas;" "Threshold Paper No. 4: Public and Governmental Involvement;" "Threshold Paper No. 5: State-Federal Interaction and National Interests;" and "Threshold Paper Nos. 6 and 7: Organization and Authorities."
30. Daniel W. Varin, Rhode Island Statewide Planning Program, Memorandum on OCZM Threshold Paper for 306 Program Approval, January 12, 1976.
31. Allen Pease, Director, State Planning Office, State of Maine, Letter to Mr. John Sun, Northeast Regional Coordinator, U.S. DOC, NOAA, OCZM, February 5, 1976.
32. Reginald W. Woolard, Coastal Resources Management Project Director, New Hampshire, Letter to Mr. John Sun, January 20, 1976.
33. Charles E. Evans, Environmental Analyst, Connecticut Department of Environmental Protection, Letter to Mr. John Sun, February 2, 1976;

and Dave Buerle, State of New York, Department of State,
Memorandum to Hank Williams, on Federal CZM Threshold Papers,
January 22, 1976.

34. Lee R. Whitaker, Personal Notes, New England Mid-Atlantic Program
Managers Meeting, January 23, 1976.
35. Ibid.
36. Sara Chasis, "The Coastal Zone Management Act," Journal of the Ameri-
can Planning Association, Volume 46, No. 2 (April, 1980), p. 151.
37. Ibid.

He who fights the future has a dangerous enemy. The future is not, it borrows its strength from the man himself, and when it has tricked him out of this, then it appears outside of him as the enemy he must meet.

- Soren Kierkegaard

CHAPTER TWO: DEVELOPMENTAL EVOLUTION OF THE RHODE ISLAND COASTAL RESOURCES MANAGEMENT PROGRAM.

A. Summary of Early State Efforts.

The first significant study of the Rhode Island Coastal Region, The Rhode Island Shore, A Regional Guide Plan Study, 1955-1970, was prepared by the Rhode Island Development Council in 1956. The Development Council, the precursor of the present-day state Department of Economic Development, was prompted by the damage caused by Hurricane Carol in 1954, and the report was an effort to determine the measures necessary to minimize damage from future storms. The study was enlarged with the aid of matching state and federal funds provided under Section 701 of the Housing Act of 1954. Reflecting the emphasis of Section 701 on Comprehensive Community Planning, the report recognized the need for a comprehensive master plan for planning, development and regulatory controls concerning the Rhode Island shore region, and recommended the coordination of state, local and federal agencies and private interest groups' efforts to achieve such a plan.¹

The State's General Assembly reacted to the need for shoreline protection from storm damage with the "Shore Development Act of 1956" which declared a state policy to protect and promote the health, safety and welfare of the people, and the state's intention to assist municipalities in arresting, protecting, and preserving beach areas from erosion and damage by the elements. The Act assigned responsibility to

the Department of Natural Resources, Division of Harbors and Rivers, which is now the Division of Coastal Resources in the Department of Environmental Management.²

In January, 1969, the Natural Resources Group, a private citizen interest group, published the Report on Administration of Narragansett Bay. The group emphasized the historic importance of Narragansett Bay to the development of Rhode Island and stressed the Bay's continuing role as the state's "greatest natural resource substantially supporting industrial, commercial, military, recreational and domestic activities."³ The report identified two distinct, but closely-related problems concerning Narragansett Bay: (1) the lack of existing state or local government management policies and goals relative to the Bay; and (2) the lack of information necessary to develop goals and policies.⁴ These needs were not unlike those identified in the 1956 Regional Guide Plan Study of the Development Council. The Natural Resources Group recommended immediate action be taken to find the best methods for determining and formulating Bay policies and the means of implementing and administering them.⁵

B. The Governor's Committee on the Coastal Zone, 1969: A State Focus.

As a result of the Natural Resources Group's effort, and the growing awareness of the citizenry to the proven historical need of a comprehensive coastal resource management program, Governor Frank Licht appointed a technical committee in March, 1969, as the first step toward drafting future management policies for Narragansett Bay and the entire Coastal Region. The Technical Committee was comprised of nine members representing eight state agencies and the University of

Rhode Island Graduate School of Oceanography,⁶ and its product is a model of rational-comprehensive planning and decision-making.

The initial report of the Technical Committee to the Governor was presented in March, 1970. It recommended:

- (1) The State of Rhode Island make a declaration regarding the importance of its coastal zone and the intention of the state to provide the proper planning and management of this resource;
- (2) The management mechanism be a coastal zone council created by the General Assembly;
- (3) The University of Rhode Island be designated as the state's coastal zone laboratory, with primary research responsibilities;
- (4) The Coastal Zone Council immediately begin to prepare a comprehensive plan for the coastal zone;
- (5) The Council identify and, if necessary, initiate the action needed to clarify the state's legal jurisdiction in the coastal zone;
- (6) The Council review statutes relating to the coastal zone and recommend necessary changes;
- (7) The Council review existing programs and projects relating to the coastal zone and make recommendations concerning their direction;

- (8) The Council develop and maintain an inventory of coastal resources; and
- (9) The General Assembly amend Section 42-1-1 of the General Laws of 1956, as amended, regarding the state's seaward boundary, so as to extend the state's jurisdiction to the maximum extent possible under existing statutes, treaties, and conventions.⁷

These recommendations grew out of the Committee's effort to define the Technical parameters of coastal zone management and fit the resultant definition into an administrative framework for implementation.⁸

But, not only was there a need for inventory data on coastal activities, there was, crucially, the need to define the space within which these activities, when occurring, would be a management concern.⁹ The Committee settled on a three-tier space definition for management operations: (1) a primary area, which roughly corresponds to the coastal drainage basin later used for basin studies under the Clean Water Act, Section 303e, and which eventually became the coastal planning area depicted as the RICRMP, "Priorities for Use in the Coastal Region,"

(2) Activity defined space which is the area or site of an activity impacting on the Coastal Region and coastal water but lying inland of the water, possibly inland of the primary area, and possibly lying beyond the state's boundary, and (3) a direct regulatory zone defined as (a) all inland tidal water bodies, the territorial sea and contiguous seas subject to state jurisdiction, (b) the adjoining land areas and included water bodies to a maximum elevation of 20 feet above mean high water,

or to a maximum distance of 200 feet from mean high water, which-
ever provided the furthest inland control, and (c) all islands, ex-
cept Aquidneck, Conanicut, Prudence, and Block Island.¹⁰ These were
treated as "mainland."

By formulating the nine recommendations, the Committee clearly
sought to create a management mechanism that would balance the uses of
the coastal zone with the basic natural environment through planned
development, which was envisioned as being comprehensive and long range.¹¹
Importantly, the guiding policies for the management of the zone were "to
preserve, protect, develop, and, where possible, to restore the re-
sources of the state's coastal zone for this and succeeding generations,"
and "preservation and restoration of ecological systems and historic and
aesthetic resources shall be the primary guiding principals upon which
environmental alterations...will be measured, judged, and regulated."¹²
This language was retained in the Rhode Island Coastal Resources Manage-
ment Act of 1971.¹³

The administrative body first recommended by the Committee to im-
plement the Coastal Resources Act was an eleven-member gubernatorially-
appointed council headed by an Executive Director, appointed by the Com-
mittee. Staff support would come from the classified civil service and
housed in the Department of Natural Resources (now the Department of
Environmental Management), while the University of Rhode Island would
provide technical research capability. The plan (Recommendation 4) was
seen as the central portion of the whole scheme. To implement it, the
implementation authorities needed to be secure (Recommendations 5, 6
and 9), and there had to be certainty that there would be cohesive ac-

tion on the part of many actors rather than a disparate conglomeration of bodies working at cross purposes (Recommendations 6 and 7). The foundation of the plan was to be constructed out of Recommendations 3 and 8.

The plan's dependence on and centrality to the management process is reflected by the implementation guideline requiring the Council to have the authority to "recommend allocations of land, submerged land, water areas, and related air space, to specified activities or types of development, together with regulations designed to control these activities...either directly or through delegation to other governmental agencies."¹⁴ Powerful tools were proposed to implement the plan: (1) authority to suspend or defer any proposed development or use of land, submerged land, water area and related air space for not more than three years after the creation of the Council; (2) authority to establish license fees or other charges for the use of state lands, submerged lands, and water uses; (3) authority to acquire land, submerged land or water areas; (4) authority to establish pierhead and bulkhead lines for shorelines; and (5) authority to develop and operate facilities or vessels.¹⁵ The Council was recommended as the lead state agency for coordination of coastally-related activities, and it was to be financed through appropriations from the General Assembly.¹⁶

The proposed eleven-member management Council had a decidedly state governmental orientation. There were to be four ex officio members: The directors of the state Departments of Natural Resources, Health, Community Affairs, and the Development Council. Seven public

members were proposed representing conservation, recreation, wildlife or aesthetic concerns (2); commercial fishing, business, industry or tourism (2); education or research (1); and local government (2). Additional advisory-only members were recommended.¹⁷

Not surprisingly, the Technical Committee was guided in its efforts by keeping a close watch on the development of coastal zone legislation in the U.S. Congress. At that time, the model piece of legislation was the "Magnuson Bill" which called for comprehensive planning and development of the Coastal Zone, to be developed in concert with local authorities, setting forth goals and planning principals, and supported by distinct standards (emphasis added) to measure decisions by and to avert arbitrary and capricious management.¹⁸ The Magnuson Bill called for authority to prepare zoning and land-use regulations to control development and to assure compliance with the Master Plan against which all proposals for development would be judged subject to full opportunity for hearings and judicial review.¹⁹

Legislation based on the Governor's Technical Committee recommendations, and reflecting the approach modeled by the Magnuson Bill, was submitted to the 1970 session of the Rhode Island General Assembly, but was not reported out of Committee and died upon session adjournment. Major pieces of legislation, such as this, not infrequently fail passage the first time around, especially when it seeks to make broad changes in power relationships. The inland boundary of the coastal zone was the principal stumbling block in 1970, and the powers of acquisition a major contributing factor, as the local governments of 21 communities,

or slightly more than half of the local governments in the state, representing two-thirds of the state's population, balked at the legislation's attempt to claim state control over the strip of land 200 feet inland from mean high water or to elevation 20 feet, whichever was greater.²⁰

C. The Expanded Committee, 1970: The Shift to the Local Focus.

On November 23, 1970, Governor Licht, by Executive Order No. 19, reconstituted and expanded the Technical Committee and charged it to continue the study of the Coastal Region and "to propose an acceptable, effective and equitable mechanism to ensure the proper and orderly development and management of Narragansett Bay and the Coastal Zone."²² The expanded committee had greatly increased representation compared to the previous version, with an additional 52 members²² and seven advisory personnel from Regional and Federal Agencies added to the original nine.²³

The new committee, acknowledging the difficulties the earlier legislation had vis-a-vis local authorities, prepared a management program model that would have broad jurisdiction over tidal water areas defined as extending from mean high water to the limit of the state's territorial sea, and limited powers over land restricted to a few specific uses and types of activities.²⁴ The planning and implementation themes remained substantially intact, as did the following decision-making criteria (i.e., standards): (1) capacity of areas to support activities and impact of activities on ecological systems; (2) state water quality standards; (3) need and demand for activities and uses; and (4) compatibility of activities and uses.²⁵ To implement the plan, the Council

would continue to have the authority to formulate the regulations, as previously envisioned, and a 'burden of proof' requirement for developers was advanced requiring them "...to show that their proposals would not make any area unsuitable for the uses or activities to which it is allocated by the Coastal Zone Plan."²⁶

There was an emphasis before the new Committee that the modifications necessary to overcome local objection had several major disadvantages, particularly with regard to the total lack of ability of the proposed Council to have an impact on local zoning and taxing policies; its limited role in resolving conflicts resulting from competition for land; an over-all inability of the Council to deal with numerous specific problems; and a probable result that the Council would not be eligible for federal funds, should they become available, because of insufficient zoning and land acquisition powers.²⁷ The last point was acknowledged²⁸ as being debatable; and as it turned out, it is the only prediction of the four which did not bear out.

The legislation born from the second technical committee resulted in an enactment by the 1971 session of the General Assembly, creating in Chapter 46-23 of the General Laws, as amended, a management mechanism consisting of a Coastal Resources Management Council and staff. The Council was created with close ties to the Department of Natural Resources, as originally proposed, with the Division of Coastal Resources formed from the old Division of Harbors and Rivers to serve as the staff arm to the Council. That Division had historically been the permitting agency for activities in and over state coastal waters, but it never had the broad powers for Coastal Management

The formula for Council membership, however, changed dramatically. The Council's size was increased to 17 members, and the number of ex officio state department members was reduced to two with the exclusion of the Directors of Community Affairs and the Development Council. The number of local government officials was doubled to four, and four elected officials from the General Assembly were added, two each from the House of Representatives and the Senate. The number of public members was increased from five to seven, but the type of representation criteria was completely dropped.²⁹

The formula for choosing members to the Council creates an appearance of complexity and balance. Of the 15 appointees, 7 are allocated to the Governor, 7 to the Speaker of the House, and 2 to the Lt. Governor. The formula also provides that the majority of the members are from coastal communities and provides that small communities of less than 25,000 in population are represented. No more than 2 persons shall be from the same community, and there is inland representation.³⁰

The composition of the Council indicated a clear victory for campanism,³¹ while the lack of criteria for types of public representation and the expansion of the "public" representation threw the Council open to a host of special interests. Under such a scheme, the only way clear, forward motion could be achieved would be through deft leadership and pursuit of consensus on broad goals and objectives initially, and on particular issues over time. It is this need that made the plan a critical document. If the plan became too specific, then the latitude of the local and special interests would be clipped, perhaps more than these interests would be willing to accept at any particular time.

The eventual result was adoption of a management program which has developed an interesting implementation history.

D. The Program Prospectus: A Guide for the Crucial First Steps.

In September, 1971, the Rhode Island Statewide Planning Program published the Program Prospectus for the Coastal Resources Management Council "to assist and guide the newly created Coastal Resources Management Council and its staff to manage the state's coastal resources in a manner which will provide the public with the optimum use(s) of... (the) bay and the Coastal Region."³² It sought to lay down the procedures for plan development, using the work of the two technical committees as its base. It suggested a three-phased approach: (1) concentration on specific problems of major significance and immediate interest; (2) data acquisition and evaluation for the plan and to support decision-making; and (3) continuing coastal resources management and planning after the preparation of the plan.³³

The first problem area recommended for Council attention by the Prospectus was its permit system, which it inherited from the Division of Harbors and Rivers and which was viewed as the basic method for control of activities under its jurisdiction.³⁴ The Prospectus urged formulation of permit system operating procedures; development of standards for evaluation of applications, and development of criteria "to determine which applications could be handled routinely by the staff and which would require the attention of the full Council,"³⁵ and it urged definition of those situations which would require hearings.³⁶

The second concern recommended for Council attention was a site study for a nuclear power plant. This study would include site selection criteria; site evaluation, site ranking, and site development recommendations,³⁷ but it was not to be emphasized to the exclusion of the other technical studies required for the plan. These studies were specifically cited by the Prospectus as: (1) population and economic activity studies; (2) hydrological studies; (3) descriptive and analytic measurements of the physical and chemical properties of the Bay and Coastal waters; (4) ecological studies; (5) geological survey; and (6) inventory of the activities and physical uses of the coastal area.³⁸ These technical studies were seen as vital parts of the plan preparation and were to be fed into the long-range program to "monitor" all key aspects of coastal waters. There was an emphasis here on the concepts of baseline data and water quality and the allocation of uses "in accordance with the ability of the resources of each area to support various activities."³⁹ In addition to the power plant study, special areas of concern requiring Council attention were legal jurisdiction, public access, affects of land uses on water areas, port development, promotion of marine commerce, and overall formulation of regulations to implement the plan and program.⁴⁰

When viewed with the benefit of nearly a decade of hindsight, the recommendations of the Prospectus (examined within the context of the Council's composition and its concomitant mind set) and the predictions of the second technical committee referred to earlier, form a base for establishing evaluative criteria that can be measured with objective data collected from the permitting system and other records maintained by the Division of Coastal Resources for the Council.

E. Coastal Resources Management: The Shakedown Period.

A review of the newsfile covering the first 18 months of the CRMC's existence offers considerable insight into the initial abilities of the Council, its early concerns, and its most severe problems. It is important to note that The Providence Journal and The Evening Bulletin, both Journal Company papers, endorsed the enactment of the Coastal Resources Management Act of 1971 in two editorials in April and July of that year.⁴¹ Once the Council was created in July, 1971, and the appointments made, the pressures which helped to stimulate its creation descended upon it and, from the impression conveyed by the press in those early months, nearly destroyed the experiment.

Development on the Green Hill Barrier Beach complex in South Kingstown captured the Council's attention in 1972 as the town sought to limit development. This issue brought to the fore the spectre of the taking issue, and underscored the need for the Council to have a plan.⁴² The issue also brought the Council into a dispute with the Department of Natural Resources concerning enforcement of Council regulations.⁴³ The issue is still unresolved as the courts have ruled in favor of residential development (Annicelli Case) and that decision is being appealed by South Kingstown. Amicus briefs have been filed by the CRMC, the University of Vermont Environmental Law School, OCZM and others.

The Council found itself locked in an interagency dispute with the State Department of Health over regulation of vessel-to-vessel transfer

of oil.⁴⁴ The Health Department was opposed to permitting use of the Bay for such transfers, while the Council favored the activity with proper regulation. The Council successfully defended its position in this case.

The Council also became embroiled in a proposal in the Upper Bay region to dredge and fill a 50,000 square-foot area of Stillhouse Cove for the Rhode Island Yacht Club.⁴⁵ The Council granted an assent for the project over intense local opposition and admitted that there was no environmental impact study prepared for the project because of a complete lack of staff and money to prepare such a study. Vestiges of the Yacht Club issue were still plaguing the Council in early 1981, although the issues at hand were no longer environmental or use issues. Rather, the Council's process was being manipulated in an internal feud at the Yacht Club over the alignment of floats.⁴⁶

The staffing issue had been an acknowledged early problem, and it was reported that the Council was operating with "absolutely insufficient" funds.⁴⁷ The Natural Resources Group recommended that the Governor appoint a full-time Executive Secretary and provide the Division of Coastal Resources with more staff.⁴⁸ However, an unexpected problem was generated by the first Chairman of the Council, Dr. Vincent T. Oddo. An investigation of all the berthing fees collected at state facilities at Galilee, Jerusalem, and Tiverton, all operated by the Department of Natural Resources, revealed that fees were as much as 600 percent lower than fees charged at private facilities; and as a result, the state's revenues came nowhere near paying the costs of operating and maintaining

its own facilities.⁴⁹ The difference, naturally, had to be made up from tax revenues. Out of this came reports that the lower rates were politically motivated and that influential persons exerted pressure on state officials to govern the assignment of these "coveted berths."⁵⁰ Among those so charged was the first Chairman of the Coastal Council.⁵¹ This issue has been resolved with the acceptance of subsidized berthing for the commercial fishing industry.

Amid the clamor over the berthing fees and alleged influence peddling, The Providence Journal published an editorial requesting the Chairman's resignation from the CRMC.⁵² The editorial emphasized that the Council had legitimate problems with lack of staff and money, but it had also caused a lack of public confidence from the "squabbling with other state agencies, and fumbled its way late into the row over residential developments on the shore at Green Hill, and is stumbling its way through near farce in the matter of construction of a proposed East Providence chemical storage plant."⁵³ The editorial asked the Governor to restart the Council in the right direction in January.⁵⁴ Doctor Odde resigned the Chair, but he remained on the Council.

The new Chairman, former Tiverton State Representative John A. Lyons, assumed control of the Council in 1973, and later that year, the state initiated its application process for Section 305 CZMA planning funds. The Council settled into routine permitting of activities along the shoreline, in a fashion similar to the Division of Harbors and Rivers Operations before enactment of the Coastal legislation in 1971. From late 1973 until May, 1978, while the Council was engaged in "routine" permitting, its primary attention was focused on attaining

federal CZMA Section 305 and 306 monies to enable the state to prepare the comprehensive management plan that was so vitally needed and then to implement it on an on-going basis as envisioned by the Section 306 mandate. Until the existing plan was adopted in September, 1977, the CRMC operated on an abbreviated set of policies and plan adopted in early 1973.⁵⁵

This early flurry of "bad press" all but disappeared after 1973, but it helped to create a true "bunker mentality" among the old-hand Council members. It also revealed to the Council leadership the benefit of good press relations. The result has been a tendency for the Council to sponsor relatively noncontroversial work, leaving tough issues such as aesthetics, lease fees, and highest and best use/permisible uses alone. It has also cost the Council its leadership role over precisely that area of the state that the Natural Resources Group in 1969 declared as the state's most important resource—Narragansett Bay. The Governor's Office has had to resort to creating another panel to settle use conflicts on the Bay.⁵⁶ And, another special Commission had to be legislatively created to deal with the lease fee issue, that is, charging users of state waters and bottom lands an appropriate fee for their exclusionary use, a use which includes filling below mean high water.⁵⁷

The bunker mentality expresses itself most acutely whenever persons intimately involved in or familiar with the CRMC's Program express concern that major programmatic deviations are occurring, or that the larger issues are escaping to the detriment of the Program. The Council has apparently lulled itself into believing its own press releases,

periodic newsletter, and laudatory praise from the OCZM Public Relations Specialist.⁵⁸ The public relations approach creates an illusion that provides escape from the harsh realities revealed through the case load analysis. For instance, it is frequently announced to the public through the Newsletter or television spots that the CRMC has stringent regulations on salt marshes or that the CRMC is protecting our coast. These statements are absolutely true, but they do nothing to convey the immense difficulty in fulfilling these objectives because of what can only be described as a lack of public acceptance of the CRMC's Program. Worse, the evidence shows also that the Council itself does not fully accept or abide by its Program.

CHAPTER TWO: FOOTNOTES

1. The Rhode Island Development Council, The Rhode Island Shore, A Regional Guide Plan Study, 1955-1970, (Providence: 1955).
2. General Laws of Rhode Island, Title 46, Chapter 3, Section 46.
3. Natural Resources Group, Report on Administration of Narragansett Bay, (Providence, Rhode Island: January 1, 1969).
4. Ibid.
5. Ibid.
6. The First Technical Committee established by Governor Licht was comprised of the heads of the Departments of Natural Resources, Health, Public Works, Community Affairs, the State Budget Officer, the State Planner, the head of the Water Resources Board, a ranking Official from the University of Rhode Island Graduate School of Oceanography, and the Governor's Federal Coordinator.
7. Rhode Island Statewide Planning Program, State of Rhode Island Report of the Governor's Committee on the Coastal Zone, (Providence, Rhode Island: March, 1970), pp. 110-112.
8. Ibid., p. 3.
9. Ibid., pp. 11-13.
10. Ibid., p. 14.
11. Ibid., p. 110.
12. Ibid., p. 110.
13. General Laws of Rhode Island, Title 46, Chapter 23, Section 46-23-1.
14. Report of the Governor's Committee on the Coastal Zone, p. 113.
15. Ibid., pp. 113-114.
16. Ibid., pp. 114-115.
17. Ibid., p. 117.
18. Ibid., p. D-3.
19. Ibid., pp. D-3, D-4.

20. Rhode Island Statewide Planning Program, Program Prospectus for the Coastal Resources Management Council, (Providence, Rhode Island: September, 1971), p. D-4.
21. Ibid., p. A-1.
22. Three of the members of the expanded Technical Committee on the Coastal Zone now hold key positions in the management program. Former State Representative Mr. John A. Lyons, Chairman and paid Executive Director of the CRMC; Mr. Paul T. Hicks, paid Executive Director of the Rhode Island Petroleum Association, and CRMC Secretary; Mr. James T. Beattie, Former Administrative Aide to Providence Mayor Joseph A. Doorley, now Chief of the Division of Coastal Resources.
23. Program Prospectus, pp. B-1, B-4.
24. Ibid., p. D-4.
25. Ibid., p. D-5.
26. Ibid.
27. Ibid.
28. Ibid.
29. General Laws of Rhode Island, Title 46, Chapter 23, Section 46-23-2.
30. Ibid.
31. A term applied to underdeveloped nations expressing an underdevelopment of economy in terms of a poverty of outlook, meaning literally loyalty to only that which can be seen from the Campanile or bell tower, which normally would be the tallest structure in town.
32. Program Prospectus, p. 5.
33. Ibid., p. 6.
34. Ibid., p. 18.
35. Ibid., p. 19.
36. Ibid.
37. Ibid., pp. 19-20.
38. Ibid., pp. 20-21.
39. Ibid., p. 24.

40. Ibid.
41. The Providence Journal Company, The Evening Bulletin, "The Best Beginning," April 6, 1971, and The Providence Journal, "Save the Shore." July 5, 1971.
42. Ibid., The Evening Bulletin, "Coastal Panel to Assume Control of Beach Growth," September 6, 1972, The Evening Bulletin, "Beach Conservation," September 1, 1972, and The Providence Journal, "Council Maps Plan in Oil, Beach Cases,"
43. Ibid., The Evening Bulletin, "Green Hill Dispute Going to Governor," September 25, 1972.
44. Ibid., The Evening Bulletin, "Oil transfers in Bay Divide R.I. Agencies," August 28, 1972; The Providence Journal, "Council Maps Plan in Oil, Beach Cases," September 6, 1972; and The Evening Bulletin, "Coastal Panel is Given Primary Jurisdiction on Bay Oil Transfers," January 3, 1973.
45. Ibid., The Evening Bulletin, "Bay Guardam," December 27, 1972; The Providence Sunday Journal, "R.I. Yacht Club Project Not Studied by Council," December 31, 1972; The Evening Bulletin, "Yacht Club Cove Plan Draws Fire," December 28, 1972.
46. Ibid., The Providence Sunday Journal, "R.I. Yacht Club Project Not Studied by Council," December 31, 1972 and R.I. Yacht Club CRMC File No. 81-1-6.
47. Ibid., The Evening Bulletin, "New R.I. Agency Beset with 2 Old Problems," November 9, 1972.
48. Ibid., The Evening Bulletin, "More Staff is Urged for Coastal Council," October 27, 1972.
49. Ibid., The Providence Sunday Journal, "State Deeply Undercuts Private Marinas," October 22, 1972.
50. Ibid., The Providence Sunday Journal, "Influence Try Alleged on Berths at Galilee," October 1, 1972.
51. Ibid.
52. Ibid., The Evening Bulletin, "Resign, Doctor Oddo!" October 20, 1972.
53. Ibid.
54. Ibid.
55. Coastal Resources Management Plan, September 18, 1972, Filed with the Rhode Island Secretary of State, May 30, 1973.
56. The Providence Journal Company, The Providence Sunday Journal, "Garrahy Appoints Panel to Study Groups' Conflicts Over the Use of Bay," February 22, 1981.

57. Special Legislative Commission to Study and Make Recommendations Regarding Appropriate Fees to be Charged for all Private Uses of Public Waters and other Related Regulations and Statutory Provisions, Final Report, (Providence, Rhode Island, February, 1981).
58. The Providence Journal Company, The Providence Journal, "R.I. Coastal Management Described as Among the Best," October 25, 1979.

I predict a bright future for complexity.
Have you ever considered how complicated
things can get, what with one thing al-
ways leading to another.

- E. B. White

CHAPTER THREE: THE DECISION-MAKING PROCESS OF THE RHODE ISLAND COASTAL
RESOURCES MANAGEMENT PROGRAM.

A. Process Description.

Simply described, a person or persons acting as private citizens or representing any organization or any unit of government, must apply for and receive a Coastal Resources Management Council "Assent" prior to commencement of activities within the Council's jurisdiction. The application process involves the submission of plans along with a \$35.00 filing fee, and the project is then put out to public notice for a 30-day review and comment period.

At the end of the 30-day review period, provided that all reviews are completed and there are no objections, the Council decides on the case (application). If there is an objection, a public hearing is held by a subcommittee of three Council members assisted by legal counsel, a court stenographer, and Division of Coastal Resources (DEM) staff, including the Division Chief in every case. The hearing serves to obtain for the Council "the best evidence reasonably obtained"¹ for and against the application. When the hearing process is completed, the subcommittee files a report with the full Council, which then issues a decision that is usually consistent with the subcommittee's recommendations and normally occurs within a month after the subcommittee report.

Once a council decision is reached on a case, the Division of Coastal Resources staff sends an assent (or denial, whichever is the case) to the applicant. Project modifications (i.e., stipulations) are attached to the assent. In contested cases, the legal counsel writes the decision with findings of fact, conclusions of law and stipulations, if any. Any interested party can appeal a decision within 30 days after the decision is sent to the applicant.

These are the mechanics of the process. However, to understand the process, it is essential to comprehend the specifics of the legislative charge to the CRMC, and the way that charge is programmatically translated. The CRMC has direct authority over the entire shoreline and over those activities that are likely to "significantly affect the shore or tidal waters."² This authority is exercised through a direct permitting of "all activities between the mean high water mark and the outward limits of the state's territorial sea, coastal wetlands, physiographic features and all directly associated areas contiguous to and necessary to preserve the integrity of such areas and features," including coastal ponds.³

This language strongly suggests that the Council has control over land use in a zone along the shore. Section 120.0-2 of the RI-CRMP defines physiographical features as being "beaches and barrier beaches; cliffs, ledges and bluffs; coastal wetlands, and sand dunes."⁴ The entire shoreline consists of one or more of these features, except in some instances where the land is bulkheaded in some form out past mean low water, in which case the Council retains authority over the facility and an inland zone because such man-made devices are "shoreline protection facilities."⁵

The zone in question is defined in Section 120.0-2 to be 200 feet inland from the particular physiographical feature. It is not programmatically defined for bulkheaded areas (unless there is a physiographical feature there also), but the Council has statutory authority over "all directly associated contiguous areas which are necessary to preserve the integrity of such facility."⁶ This programmatic and statutory language has created an area of dual jurisdiction where state and local authorities converge, creating a situation where constant large and small conflicts can ensue, especially because "each coastal municipality (retains) primary responsibility for managing land use along its coast."⁷

The dual jurisdiction is acknowledged and local authority is acceded to in the operating policy that creates the Council as "the last step for in-state permit procedures (acting) formally on an application only when all local and other state approvals have been obtained."⁸ This policy, while convenient, has obvious limiting features if the state acting through the Council expects to exercise some form of rational comprehensive and/or simply effective control in the shoreward management zone. The policy restricts CRMC initiative and it allows local approval and project start-up in ways not fully consistent with the RICRMP.

As an illustration of the unintended effect of this policy, records show that in 1980, 46 percent of the applications before the Council as a result of Cease and Desist Orders were project start-ups that had received local building permits or were locally sponsored public works projects. (Cease and Desist Orders are more

fully described in Chapter 3, Section D) There were also 51 Cease and Desist Orders issued on landside projects for which local approvals were not required and/or there was either ignorance of or outright ignoring of the state's authority (Table 5, Section D).

The programmatic approach to assuring these types of deviations do not occur is wholly unrealistic when viewed against the statistics cited above. The Program requires that "Persons proposing alterations along the shoreline are informed by Council staff or by local authorities when a Council permit is required."⁹ Damage to physiological features has often occurred by the time a Cease and Desist Order is issued. As a result, restoration, a goal of the 1971 legislation, is either impossible such as in a case of sea cliff alteration, or impractical because of the probability of worse effects such as heavy siltation of a coastal pond as would occur when a party has illegally filled and bulkheaded below mean high water. Moreover, these phenomena often occur in areas where such a project would have a very low probability of being permitted because the evidentiary burdens of the program would be difficult or impossible to meet.

It is the evidentiary "burdens of proof" of the Program which are simultaneously its strength and one of its weaknesses, at least as experienced in present operations. Statutorily, these burdens are placed upon the applicant to demonstrate for any development or operation within, above or beneath the state's tidal waters that their proposal will not: (1) conflict with any resources management plan or program; (2) make any area unsuitable for any use or activity to which it is allocated by a resources management plan or program;

or (3) significantly damage the environment of the coastal region."¹⁰

Authority over land areas gives the Council power which is "limited to situations in which there is a reasonable probability of conflict with a plan or program for resources management or damage to the coastal environment."¹¹

Specific uses or categories falling under the Council's landside authorities are: power generating and desalination plants; chemical or petroleum processing, transfer, or storage; minerals extraction; sewage treatment and disposal, and¹² solid waste disposal facilities.

Programmatically, the burdens are refined to include "reliable and probative evidence that the coastal resources are capable of supporting the proposed activity or alteration including the impacts and/or effects upon: circulation and flushing patterns, sediment deposition patterns, biological communities (vegetation, shellfish, finfish, wildlife habitat), aesthetic and/or recreational value, water quality, public access to and along the shore, erosion and flood hazards, runoff patterns, and existing activities."¹³

These pertain to Shoreline Systems, and with the exception of the existing activity category, Tidal Waters, and Coastal Ponds.¹⁴ With regard to Tidal Waters and Coastal Ponds, the burdens are still more rigorous, in that these areas are classified according to use values: conservation/low intensity use, multiple use recreation, high intensity use recreation, multiple use, and urban use. The burdens correspond to the assigned value of preservation, and the language governing permitted use in conservation/low intensity use and multiple use

recreation areas becomes restrictive, in that certain activities will "be permitted only upon demonstration that a bona fide benefit to the public welfare will result, and, further, that no reasonable alternative exists."¹⁵ For conservation estuaries, these activities are: in-

dustrial development, sewage disposal and stormwater runoff, deposition of fill, extensive grading or excavation, installation of cables and pipelines, storage and transport of hazardous materials, dredging and structures in navigable water. In multiple use recreation waters, these activities are similar but less restricted: industrial development, disposition of fill, discharge of domestic, municipal and industrial sewage, extensive grading or excavation, storage or transport of hazardous materials, and any activity disruptive of recreational

¹⁶ use. Permits are also required for alteration of tributary waterbodies and for the alteration of salinity and water volumes; and for proposals to fill tidal waters, applicants must demonstrate bona fide benefit to the public welfare and that there is no reasonable alternative means to achieve this public benefit.¹⁷

Specific burdens have been established for applications requesting structural forms of shoreline erosion control such as rip rap or bulkheading. These projects must "demonstrate that non-structural means have been fully evaluated as a solution to the problem;"¹⁸ and, where non-structural methods are unsuitable, the proposed structure must be demonstrated to have a reasonable probability of controlling erosion in the site, and not increase erosion on nearby areas and not have a significant adverse impact on the areas' environmental

quality. The use of structural erosion controls is prohibited in beach areas unless an "applicant demonstrates by probative evidence lack of available sediment" for nonstructural controls (i.e., vegetation, fencing, sand bags, etc. Eighteen specific beach areas where this prohibition applies are listed in the RICRMP.¹⁹ Burdens are similarly established in each section of the RICRMP from Water Quality Management to commercial and industrial siting. One could easily draw the inference that each application is accompanied by evidence that these burdens have been met through evaluation by the applicant. Data collected and the impact analysis, theoretically at least, accompany the application. However, in practice, this is not so. The most common method of addressing these burdens is to not address them at all; or, on occasion, a letter of Program consistency accompanies the application. This appears to have developed because of the seeming impracticality of requiring what is essentially an environmental impact statement on each project, regardless of scale and type, and it is fostered by the Administration of the Program.

Applicants are provided application forms with a checklist of up to 20 or more project description items that must accompany each application. These are not programmatically or statutorily related. An applicant's handbook has been prepared and is generally ill regarded by staff personnel. It does not relate well to the RICRMP or reflect the Program's burdens on applicants. It serves mostly as a well-intentioned vehicle to make the RICRMP understandable to the

greatest number of people. It is the lowest common denominator approach to public information and offers rules-of-thumb, such as "If your feet are going to get wet with salt water, you definitely need a permit," or "If you are breathing good salt air, you probably need a permit." The handbook also lists informational items similar to
20
the checklist.

The product of the organizational environment described in the preceeding paragraphs is an operation that attempts to capture through a regulatory permitting process every form of activity within 200 feet of the inland edge of the nearest shoreline system and/or mean high water, and next to nothing further than 200 feet unless it is one of the specific land uses covered by the legislation. It is an operation that requires those projects captured to be subjected to an application process that requires plans and information that do not address the fundamental burdens of proof established by law and the RICRMP. This throws the entire burden of proof onto the administering personnel. It leaves to the staff the responsibility of determining project consistency with the RICRMP; and whenever this determination is not possible due to clear conflicts or because of subtle long-term or even supposed but uncertain conflicts, the staff triggers the burden of proof question. This does not mean that the Council uniformly seeks to clarify the issues or resolve the conflicts. In fact, the staff objections to projects may not be considered objections and are not always handled the same way as local government or private
21
citizen objections.

Applications for Council permits are processed by the staff of the Department of Environmental Management. "The Staff ascertains what other state and federal permits are needed and that the application procedure is being followed in proper sequence,"²² and each project is evaluated by a Fish and Wildlife biologist, an engineer, the planning staff and at least one member of the Council. To this group, add the Chairman/Executive Director of the Council and the Chief of the Division of Coastal Resources in the vast majority of cases.

Data relevant to the nature of the proposal and the site are taken from the mapped data base which is on file at the Division of Coastal Resources. This map base was prepared with CZMA Section 305 planning monies, and it utilizes 1975 U.S. Geological Survey base maps and ortho photos. Mylar overlays show local zoning, water and sewer service areas, significant natural areas, historic places and districts, recreation areas, flood zones, wetlands and topography at a scale of 1:12,000 inches.

The engineer and the biologist prepare a written statement which addresses the engineering plans submitted, site suitability assessment and recommendations for Council action. This is added to the file with the data from the mapped data base and a policy and regulation analysis on the proposal. Curiously, the Council does not require professionally prepared engineering plans, thus, placing total plan and site evaluation on the staff, and in some cases, the Council has actually requested the staff to prepare plans for applicants, includ-

ing developers. The Council member or members and the Division Chief who visits the site prepare no written statement for the record, but at the time of the Council's meetings, projects are introduced by these Council members usually acting as advocates for approval with staff recommended modifications and/or site impact mitigation stipulations.

All the completed review forms, and a summary of the major points, comments from individuals, groups, local, state, and federal agencies are provided to the Council members four to five days before they act on the application. The entire package of materials is also available to the public. It includes a report from the Rhode Island Historical Preservation Commission regarding the potential or actual historical and archeological resources on the project site; a Water Quality Certification from the Division of Water Resources in the Department of Environmental Management regarding project impacts on water quality classifications; and a State Guide Plan Consistency Certification and Flood Hazard Zone determination from the Rhode Island Statewide Planning Program in the Department of Administration. These latter two consistency reports are statutorily mandated.

This procedure results in one or two volumes of material reproduced for the 17 Council members, with seven additional volumes for the staff and stenographer, and interested parties, such as the Attorney General's Environmental Advocate and the Statewide Planning Program. The photocopying of this material, combined with the reproduction of files and transcripts for contested cases ran nearly three-fourths of a million pages in 1980.

Contested cases result from an objection to a proposal usually from a citizen or a local government. Staff objections do produce, but not always so, a contested case, and result in public hearings, the normal outcome of an objection. The state's Administrative Procedures Act and the Council's own procedures "ensure²⁷ ample public notice of all pending Council permit activities."

Hearings are held if there are one or more objections or requests for a hearing from interested parties. And, because state, federal and local agencies and any interested citizen who so request are sent copies of every application before the Council, there is ample opportunity for some party to object and kick the project out to the Public Hearing Process. (The effect of this is discussed in Section E.)

According to the RICRMP, the expected time required to process an "uncontested application" is "about 45 days."²⁸ Contested cases take longer "with the amount of time being proportional to the complexity of the Case."²⁹ These statements while perhaps representing a valid goal and a logical expectation in both instances, are not at all reflected by the reality exhibited by the administrative results or implementation, as it were, of the Program.

B. Permit Processing.

In February, 1980, at the request of the staff and in response to the consultant's procedural evaluation, the CRMC moved to two³⁰ monthly meetings to decide cases. At that time, the staff's analysis of the case load revealed that the number of cases had increased

65 percent from 1978 to 1979 (153 vs. 253) and that the one meeting per month had three built-in opportunities for delay. First, because the meeting agenda is set approximately one week prior to the meeting to allow for the reproduction and distribution of the files for each CRMC member to review, applications that have comment deadlines within that one-week period are blocked out by the sequence of events and pushed off to the next meeting for a delay as much as 35 to 40 days.

A similar fate awaits cases that have comment deadlines that close within a week or two after the meeting. These can be delayed as much as 30 to 35 days. Finally, there are applications that have comment periods that close prior to the setting of the agenda, but for any one of a variety of reasons, may not have a completed file. These are often uncontested cases, but for the vagaries of mail deliveries, staff case load backlogs at reviewing agencies, delayed notification of the lifting of local requests for extended review, individual illness, etc., can be delayed for as much as 35 days.

By establishing two monthly meetings, the CRMC cut these delays in half, making a significant difference to applicants faced with seasonal constraints, financial requirements, contractual possibilities, etc. Moreover, the reduced case load per meeting, a volume that approximates that experienced in 1978, provides the CRMC greater opportunity for deliberation, if necessary, on cases and affords the staff and others the opportunity to make presentations to the CRMC. It is estimated that approximately 1,100 days of delay were prevented between

February 1, and October 28, 1980, by moving to two monthly meetings (Table 1). During that period 43.5 percent of the decisions were reached at the second meeting, and in the last four months of the sample period, the second meeting actually resulted in four decisions more than the first meeting.

The two meetings per month was a "quick fix" tactic deployed by the staff and accepted by the CRMC. Prior to January, 1980, the month that the staff proposed the concept formally before the CRMC Policy and Planning Committee, the CRMC leadership had been peculiarly insensitive to criticism offered in the best interest of the management process. On one occasion, the debate reached the public's attention, when on June 21, 1979, at the Office of the Rhode Island Statewide Planning Program during a meeting of the State Planning Council's Technical Committee for A-95 Review, it was reported by that agency's planning staff that the CRMC's existing permit system costs approximately \$1,000. per permit to operate and causes delays in the decision-making process and to applicants. These criticisms were substantially acknowledged by a high-level official from the State Department of Community Affairs and the Governor's Coastal Program Manager, and were reported in the Providence Journal the following day.

A rebuttal was prepared for the CRMC and forwarded by the Council to the Governor on June 28, 1979, stating that the criticism was "unjustified" and that the Federal Office of Coastal Zone Management Section 312 Findings (of April, 1979) were "directly opposite" those reported at the Technical Committee. The letter to the Governor went on to claim that the Rhode Island Program is a "model" program.

Contrary to the effort of the CRMC to discredit the report on June 21, the cost of processing one permit was, in fact, estimated at \$1,000. by the Federal Office of Coastal Zone Management in its Section 312 (CZMA) findings of April 19, 1979.³³

That report also concuuded that the processing time for permits was "rapid" having been reduced from 60 days to "almost 30 days as a result of staff additions."³⁴ Because the source of OCZM's information is the state program participants, one wonders why the program had not challenged the Section 312 findings while they had been available in draft or even final form with regards to the cost estimate, if that estimate was erroneous. Also, since the state was the source of the estimate for permit processing time, one becomes suspicious of the verity of the claim that the processing time was 30 days. Documented material for calendar year 1979³⁵ reported that the average processing time for applications that had reached a decision was 83 days, and that this group represented only 62 percent of the total applications received. Another 38 percent or 95 applications were reported as still pending at the time of that sampling (at year's end), and discounting these most recently received, 88 had been pending two or more months. Fifty-six percent of the pending cases had been in the process for more than three months. The average time pending was 4.5 months. These figures are in stark contrast to those reported by OCZM (for 1978), and it certainly appears that the letter of June 28, 1979, reflects either ignorance of reality or a bold coverup of the facts.

TABLE 1

1980 CRMC MEETING WORKLOADS: Applications Reviewed

RESULTS OF MOVING TO TWO MEETINGS PER MONTH

<u>MONTH</u> ¹	<u>FIRST MEETING*</u>	<u>SECOND MEETING*</u>	<u>TOTAL</u>
February	12	4	16
March	11	4	15
April	8	5	13
May	10	8	18
June	8	5	13
July	7	10	17
August	6	9	15
September	9	8	17
October	<u>12</u>	<u>11</u>	<u>23</u>
TOTAL:	<u>83</u>	<u>64</u>	<u>147</u>
PERCENT:	<u>43.5</u>		

*As a result of moving to two meetings per month, the Council processed 43.5 percent of the caseload at the second meeting of the month during the period examined. Estimated days delay prevented: 17 days per application based on a halving of the approximate 35-day delay applications that could occur under the one-month meeting schedule.²

Savings: 17 X 64 = 1,088.

NOTES: 1) Tabulated from CRMC agendas February through October, 1980.

2) Estimates derived by Coastal Resources Staff and reported in Division of Coastal Resources Annual Report for Fiscal Year 80.

These findings are even more startling if one considers that the permit system produces very predictable results and that on the landside of the Coastal Zone, the RICRMP itself leaves "use" determination to local government. The CRMC will not accept an application for a landside project until all other approvals, such as approval from the local building official and ISDS, have been obtained.

Another sample was taken on November 12, 1980 (Table 2). Of the 215 cases handled by the CRMC between January 1, 1980, and the sample date, nearly 60 percent had reached a decision. The average length of time required for a decision in these cases was 96 days (3.2 months). Of these, 82, or 38 percent of the sample, reached a decision within 75 days. Out of these 82, only 2 went to a Public Hearing, and they were completed within 61-75 days. When compared with the 128 decisions found in the sample, cases concluded within 75 days represent 64 percent of the decided applications.

Significantly, nearly 15 percent of the decisions reached required more than 166 days (5.5 months), and 58 percent of these more lengthy cases were products of the public hearing process. Thirty percent of all cases decided in more than 75 days went through the hearing process.

There were 87 cases pending at the date of the sample, representing 40 percent of the sample. Thirty-one percent of these (40) were pending for more than 181 days (6 months). The average length of time pending was 176 days or nearly six months. Of the 87, 42 percent were out to hearing. However, when those cases pending less than 75 days

TABLE 2

TIME PERIODS FOR CASE PROCESSING¹

TIME PERIOD DAYS	NO. OF DECISIONS	%	PENDING CASES	%	DECISION AND HAD HEARING	PERCENT ATTRIBUTABLE TO HEARING PROCESS	PENDING & HAD OR OUT TO HEARING	PERCENT ATTRIBUTABLE TO HEARING PROCESS
30-45	26	.2031	10	.1162	0	--	0	--
46-60	28	.2187	10	.1162	0	--	0	--
61-75	28	.2187	6	.0697	2	.1250	0	--
76-90	7	.0546	3	.0348	0	--	2	.0540
91-105	6	.0468	5	.0581	0	--	2	.0540
106-120	6	.0468	2	.0232	2	.1250	0	--
121-135	5	.0390	4	.0465	0	--	2	.0540
136-150	3	.0390	6	.0468	1	.0625	4	.1081
151-165	0	--	1	.0116	0	--	1	.0270
166-180	6	.0468	0	--	4	.2500	0	--
181 +	13	.1015	40	.3125	7	.4375	26	.7027
TOTALS:	128	.5953	87	.4046	16	.1250	37	.4252

NOTES: (1) Tabulated from Division of Coastal Resources Staff prepared "CRMC Permit Log." Sample period is January 1, 1980, through November 12, 1980, and includes all cases logged during that period, including cases carried over from 1979 that went out to hearing in 1980.

are removed from the total pending, the number pending/out to hearing jumps to nearly 61 percent. Of these pending/out to public hearing, 70 percent have been in the process for more than 181 days.

The effect of the hearing process on the length of time to reach a decision is clear. When viewed by the average time for the sample, decisions rendered through the public hearing process required 7.4 months vs. 3.2 months for the uncontested cases. Cases pending/out to hearing have been so for an average of 9.2 months. And, the two cases denied required 10.3 months on the average for the decision.

Completely comparable data for any evaluation period is not available. However, a sample of 128 cases filed at the Division of Coastal Resources as "1977 Cases," revealed an average (mean) processing time for all cases of 121 days or approximately four months. Cases that required public hearings were processed in an average of 252 days or 8.4 months, while uncontested cases required 81 days or 2.7 months to receive a decision. Because of the method of filing cases by the year of assent, the 1977 sample included cases carried over from 1976, and any files that were started in 1977, but were unresolved by December 31, 1977, were carried into 1978. The year 1977 was chosen for the sample because it was the last full calendar year before the state received federal CZMA Section 306 funds. It was also the next 12-month calendar year after the NRDC critique of the Rhode Island Program, based on pre-July, 1976, case load analysis.

The 1980 data reveals that there has been a lengthening of the time required to process cases when the "pending cases" are considered.

On the basis on just those cases that actually reached a decision, the mean processing time in 1980 was slightly less than experienced in 1977.

One feature of the processing system that drives up the administrative costs and reduces the overall efficiency and possibly the effectiveness of the program is the requirement that subdivision receive an overall review for roads, utilities, drainage systems, etc., and then each lot is reviewed on a case-by-case basis when it is time for the dwelling to be constructed. This is a rather long-standing procedure that was enunciated in a letter to the Tiverton Town Planning Board by the CRMC Chairman for the Winnisimet Farms subdivision, Phase I (File 77-6-6). That project received an assent for a 10-inch storm drain after the staff biologist had reported a salt marsh violation. The Chairman wrote that "each lot in the subdivision that comes under our jurisdiction will be handled separately."

The Council has now under consideration an application (Chase) for a single-family dwelling unit with ISDS in Winnisimet Farms which is within the CRMC's jurisdiction, but was started with a local building permit, but without a state assent. The applicant's dwelling is in a "V" high-hazard flood zone where dwellings are required by the "Rhode Island State Building Code for Construction in Flood Hazard Areas" to be elevated on pilings. The applicant has constructed a conventional foundation. Moreover, Field Reports from the staff engineer and biologist state that site preparation work has resulted in the bulldozing of 20 to 30 feet of salt marsh.

The Winnisimmet Farms case more fully illustrates the impracticality of the case-by-case approach when, three years later, the developer is now attempting to start another phase of the subdivision. If permissible uses were agreed upon and standards were in place, there would be little question of what to expect on the part of all citizens, including developers, and the preservation of coastal features may be more assuredly protected.

The Winnisimmet Farms case is not unique, as at least one of its type occurs annually. In 1979, a similar situation occurred with Lighthouse Point Subdivision in Barrington (File 79-2-16) for which eight house lots will require separate assents. The first has occurred, much to the surprise of the developer (File 81-1-2), and that was found to have violated the Conservation easement mandated but poorly reflected in the 79-2-16 decision. Another subdivision was pending action in March, 1981. Called Ferncliff Farms in Warren, four lots, two drainage outfalls, and utilities fall within the CRMC's jurisdiction (out of a very large medium density development extending upland nearly one-half mile from mean high water). Unless the Council moves to correct this administrative deficiency, the four lots will require separate permits when they are to be developed (File 81-1-7).

C. Letters of No Objection.

Sections 120.0-2A and 120.0-2C1 of the RICRMP have essentially captured all activities within 200 feet of natural systems defined as beaches, barrier beaches, cliffs, ledges, coastal wetlands, sand dunes, and "all directly associated areas contiguous to and necessary to pre-

serve the integrity of such areas and features."³⁶ The language in 120.0-2C1 is explicit in requiring a Council Permit, and while the Glossary does not define "Permit" or "Council Permit" Appendix B: Management Procedures establishes a fairly well defined course of action to obtain one. Letters of No Objection are not cited in the RICRMP as a tool of the Management Program, but they apparently have the same effect as an Assent.

Letters of No Objection have evolved as an administrative device to process activities which are believed to either lie beyond the jurisdiction of the CRMC; is an activity or use not specifically cited in the statute; are not within the 200-foot zone created by Section 120.0-2 of the RICRMP, or are within the 200-foot zone but clearly such an innocuous use or activity as to not warrant consideration by the CRMC. The "letter" has evolved on an ad hoc basis with no distinctive criteria spelled out to guide the procedure for issuance, and, importantly, to enable two or more individuals with very different educational and employment backgrounds and varying philosophies about resource management and perhaps even life expectations to visit a particular site and arrive at same or similar conclusions.

The Coastal Prospectus established as one of the top priority items before the CRMC, the development of criteria to screen out what should go before the CRMC and what could instead be handled at the staff level. The evolution of the Letter of No Objection essentially demonstrates that the Prospectus was correct in identifying this critical need, but the Letter process as it is currently implemented falls far short of

being what the Prospectus appears to have envisioned.

An examination of the Letter of No Objection issued by the CRMC from July, 1979, through August, 1980, shows that 102 letters were issued during that 14-month period, (Table 3), averaging out to approximately 7 per month. The first feature of the "Letters" that becomes obvious is that there is no paucity of examples where projects falling into nearly all categories have been sent out to the 30-day Notice period and received the full treatment. Other observations on the "Letters" are: (1) some, but nowhere near all, have stipulations attached governing one or several aspects of the project, as its time frame or site impact mitigation procedure; (2) too many of the "Letters" are so loosely written as to convey to the reader absolutely no idea of what project is receiving the letter, and while this information is supposedly available in the files at the Division of Coastal Resources, the letter itself is basically a blank check to the recipient; (3) not all letters have a turn-around time that would indicate an advantage of the "Letter" vs. "The Notice" if measured by time alone, because there are a few cases where more than 30 and 40 days were required to get the letter out. (FO'C'S'LE Restuarant, Galilee, for a deck and the Narragansett Inn, Westerly, for a deck addition), from the time the applicants first made contact with the management process.

D. Cease and Desist Orders.

When a party is detected by the Program personnel to be in violation of the RICRMP, they are issued a Cease and Desist Order and are required to perform one or more of the following actions: (1) submit to

TABLE 3

INVENTORY OF LETTERS OF NO OBJECTION

JULY 1979 - AUGUST 1980

<u>CATEGORY OF ACTIVITY</u>	<u>NO. OF CASES</u>
Construction of SFDU/ISDS.....	5
Construction of SFDU.....	6
Construction of Accessory Structures, and/or interior and exterior building modifications.....	15
Raise dwelling and/or construct additions.....	9
Construction of, repair or enclosure of porches.....	3
Construction of deck addition to house or commercial building (i.e. restaurant).....	4
General building repairs (i.e. repair, fire damage).....	7
ISDS repairs.....	4
Repair of shoreline protection facilities and boat ramps.....	4
Repair of piers, docks, dolphins, etc.....	6
Installation of temporary floats.....	4
Activity unspecified by the letter.....	6
Beach maintenance (public and private).....	3
Tie-ins with city sewer systems.....	3
Construction of commercial/industrial buildings.....	4
Installation of pilings.....	1
Maintenance dredging.....	2
Power line maintenance.....	1
Subdivision work beyond 200 feet.....	1
Installation of a 60' X 80' garden.....	1
Hydroelectric repairs and/or installation.....	2
Construction of a parking lot.....	1
Installation of a driveway adjacent to wetland.....	1
Research work.....	1
CATV Tower.....	1
Removal of pipelines and wooden dry cargo platform.....	1
Removal of wood groin.....	1
Repair of drainage outfall.....	1
Fill.....	2
Sewage Disposal System Installation "Other Facilities".....	1
Train Track Layout.....	1
TOTAL:	<u>102</u>

SOURCE: Division of Coastal Resources Letters of No Objection File and
CRMC General Correspondence File

Preparation Date: October 2, 1980.

the CRMC staff plans and/or an explanation of the activity; (2) submit an application to the CRMC for processing and eventual CRMC action (approval or denial); and (3) remove the illegality and/or restore the area disturbed by the activity that prompted the Cease and Desist.

The effectiveness of Cease and Desist Orders has been examined several times over the past four years. An evaluation conducted prior to May, 1978, by the Natural Resources Defense Council concluded that they are an effective method of halting coastal violations.³⁷ However, in 1979, it was discovered by state investigators that there was a practice of issuing "verbal" as well as "written" Cease and Desist Orders; and as one might expect, violaters clearly did not respect verbal orders.³⁸ There was mounting concern in 1979 that the extent of illegal activities occurring within the CRMC's jurisdiction was intolerable, a phenomenon acknowledged by a Providence Journal Company reporter,³⁹ and investigated by the GAO (in an unpublished and classified report) in the third quarter of the year as a part of an overall program evaluation. In response to these pressures, the Division of Coastal Resources assigned a staff person to maintain the Cease and Desist filing system, to investigate complaints, and to monitor violations. Eventually, OCZM's Section 312 evaluation of the 1979 Program year determined that "at least two weeks routinely elapses from the date the violation is detected until the order is in the hands of the responsible party."⁴⁰

⁴¹
During 1979, 70 Cease and Desist Orders were issued by the CRMC. The largest category of violations representing 30 percent of the total

involved illegal fillings or alteration of coastal wetlands. When combined with other illegal shoreline alternatives and filling below mean high water, this category expands to 40 percent of the total. This is particularly significant because of thirteen Prohibitions and Special Exceptions established by the RICRMP; one clearly states that disturbances to coastal wetlands is permitted only where a benefit to public welfare is demonstrated and no reasonable alternative exists.⁴² Moreover, these activities are clear violations of the State Guide Plan, Shore Region Policy No. 5, which prohibits filling of coastal waters and coastal wetlands unless there is a public benefit and there is no reasonable alternative.⁴³ The CRMC is legally mandated by its statute to conform to the State Guide Plan policies.

In 1979,⁴⁴ nearly 19 percent of the Cease and Desist Orders were issued to parties which had received an assent from the CRMC for some type of work, but then proceeded to either violate assent stipulations (59%), or engage in nonauthorized activities (41%) which included illegal filling of wetlands, barrier beaches, alterations, construction of unauthorized walls, illegal filling, erosion and sedimentation causing activities, and drainage outfall problems.

Of the Cease and Desist Orders issued to parties that did not have a prior assent, 27 percent involved some form of construction activity on land such as single-family dwelling units. These types of activities invariably require local building official approval, which under the CRMC application procedure is necessary before the CRMC will accept an application. The Council accepts, and, in fact, requires that

the local official only issue a letter stating that conformance with local codes and ordinances has been attained. The actual local permit is then issued after receipt of the CRMC permit. In these 19 cases comprising the 27 percent, the local permit was issued without the CRMC permit. An analysis (Table 4) of the Cease and Desist Orders, orders to remove, and orders to restore issued from January through October, 1980, determined there were 109 violations detected⁴⁵ by Program personnel. Seventy-three received outright Cease and Desist Orders, while the balance were orders to remove or restore, or in some cases, there were merely letters noting particular violations and requesting a halt or a removal and directing the party at fault to apply for an assent. When all 109 violations are considered, they represent approximately one-third of the case load for that period as measured by applications, letters of No Objection, Cease and Desist Orders, and Orders to Restore. When Cease and Desist Orders are considered alone, they represent 23 percent of the case load, and during the sample period, nearly 15 percent of all the applications were a result of activities halted by Cease and Desists. (Table 5).

The monthly rate of issuance of Cease and Desist is up from 5.8 in 1979 to 7.3 over the first 10 months of 1980. This is a 25 percent increase, and it can be attributable in part to the addition of the staff assignment in November, 1979. That assignment coincides with an observed increase in the monthly issuance of Cease and Desist Orders from 3.8 to 7.9, in the last eight months of FY 80, an increase of more than 100 percent. Moreover, all of the orders to restore during FY 80 occurred after that time.⁴⁷

Several observations were made during the preparation of Table 4. First, when a Cease and Desist Order is written up and mailed to the violator via registered mail under a transmittal letter, there is no scarcity of examples where the violation description is so vague as to be nearly meaningless to the reader. This is the same phenomenon observed with the letters of No Objection, and while documentation exists in the office on the nature and extent of the violation, material sent to the violator should be clear and specific. Second, it is documented that many Cease and Desist Orders are for activities that other individuals receive assents and/or letters of No Objection for. This is particularly true for activities in Category 5 (Table 4) which represents the second largest type of violation, with 28 percent of the total observations. With the exception of those cases where a direct threat to or damage of a coastal physiographic feature (or work below mean high water) is occurring, all activities in Category 5 are eligible for a letter of No Objection. But, this phenomenon is not restricted to that category, because a quick check of the letter of No Objection (Table 3) reveals people authorized to dredge, repair seawalls, remove vegetation, and place floats and piles without benefit of a 30-day Notice period.

The issuing of Cease and Desist Orders, in many cases, appears to be part and parcel of an administrative process that consists more of requiring people to touch base than it is comprised of sound, cost-effective environmental protection and management. An examination of the Cease and Desist Orders that resulted in applications supports the thesis that local zoning is the determinant of use. It also supports

TABLE 4

INVENTORY OF CEASE AND DESIST ORDERS/ORDERS TO REMOVE AND RESTORE

JANUARY 1980 - AUGUST 1980

<u>TYPE OF VIOLATION</u>	<u>FREQUENCY</u>	<u>PERCENT OF TOTAL</u>
1. Filling or dumping		
- below MHW or in marsh	18	
- above MHW adjacent to marsh or MHW	5	
- not specified above or below MHW	14	
Subtotal	37	34.0
2. Assent Violations		
-below MHW	1	
-above MHW	5	
-unspecified types	2	
Subtotal.....	8	7.5
3. Illegal dredging or dredged material disposal	3	3.0
4. Shoreline protection facilities		
-new	5	
-repairs to existing structures	3	
Subtotal.....	8	7.5
5. "Construction" Activities		
-dwelling (new)	5	
-unspecified buildings	3	
-dwelling additions or renovations	7	
-unspecified construction work	7	
-paving area of residential lot	1	
-filling and grading	3	
-removal of brush and trees	1	
-landscaping and/or site work (i.e. excavation)	3	
-installation of a septic system	1	
Subtotal.....	31	28.0
6. Activity on a physiographic feature	3	3.0
7. Illegal materials (placed somewhere within 200 feet)	2	2.0

TABLE 4 (Con't)

<u>TYPE OF VIOLATION</u>	<u>FREQUENCY</u>	<u>% OF TOTAL</u>
8. R.O.W. blockage	1	1.0
9. Installation of municipal sewer systems	2	2.0
10. Construction of a gravel road	1	1.0
11. Illegal piles, floats, piers and boatramps	10	9.7
12. Illegal prams, boats, and rafts	<u>3</u>	3.0
TOTAL....		<u>109</u>

Preparation Date: October 14, 1980

Source: Division of Coastal Resources

the argument that the RICRMP is an environmental impact mitigation program as it affects most activities, and that it directly concerns use of and impacts only on physiographical features, and then not exclusively. From December, 1979, through September, 1980, there were 45 cases put out to Notice as a result of Cease and Desist Orders (Table 5). During that same period, there were 103 Cease and Desist Orders issued. Nearly 44 percent of the Cease and Desists resulted in applications, and of these, as of November 21, 1980, 55 percent had received assents, 13 percent were pending action, 4 percent were ordered to restore, 7 percent were ordered to restore prior to receipt of their assent, one application was withdrawn after denial at the CRMC subcommittee level and resubmitted by the applicant (an increasingly common phenomenon); and one application was denied. Forty-six percent of these cases started because the projects had received a local building permit, or because they were locally sponsored as in the two sewer projects and the filling at Fields Point. Not counting the pending cases, assents have been issued in 100 percent of the instances where local approval initiated the work.

Not surprisingly, the weight of CRMC jurisdiction is most heavily felt for activities that effect physiographical features and involve activities below mean high water. The restorations were to correct adverse impacts on salt marshes or for illegal unnecessary rip rap. The application denied at the subcommittee level and subsequently withdrawn and then resubmitted involves a proposed single-family dwelling unit on a lot that is predominated by wetlands and is characterized by an apparent lack of buildable space. The denial was for illegal gravel fill below mean high water in an effort to shore up a failing bulkhead.

TABLE 5

APPLICATIONS RESULTING FROM CEASE AND DESIST ORDERS

DECEMBER 1979 - OCTOBER 1980

<u>FILE NO</u>	<u>NAME</u>	<u>PROJECT TYPE</u>	<u>COMMUNITY</u>	<u>CRMC ACTION</u>
79-1-13	Scarduzio	SFDU/ISDS*	Narragansett	Assent
80-2-3	Wilder	SFDU/ISDS*	New Shoreham	Assent
79-11-6	Meehan	Pier, float	Westerly	Assent
80-3-26	Kortick	Dock, float	South Kingstown	Assent
80-4-15	Lacy	SFDU/ISDS Erosion/sedimentation	Warwick	Assent
80-4-13	Kuno	SFDU/ISDS*	Charlestown	P
80-5-2	Burns	Building addition, ISDS brush in marsh	North Kingstown	Restored/Assent
80-4-16	River Bend Cemetery	Brush in marsh, develop 9 acres	Westerly	Restored/Assent
80-5-12	Riener	Filled land	Barrington	Assent
80-6-7	Steere	Rip rap wall	Narragansett	Assent
80-6-5	Carr	Rip rap wall	Narragansett	Assent
80-6-16	Marciano	Dock extension, fill in marsh	Charlestown	Restored/Assent
80-7-7	Pray	SFDU on new foundation*	Bristol	Assent
80-7-8	Chapman	Line maintenance, Narragansett Electric	Narragansett	Assent
80-8-6	Darelius	Sign on beach	Narragansett	P
80-7-19	Galilee Beach Company	Sign on Beach	Narragansett	P
80-1-5	Ritter	Building addition*	Newport	Assent
79-9-6	Gencarella	Gravel fill	Charlestown	Assent
79-4-19	Montalto	Rip rap wall	Westerly	Ordered to Restore
80-1-14	Newport	Sewer interceptor*	Newport	Assent
80-2-6	Andruchow	Rehabilitate SFDU*	Charlestown	Assent

Continued..

TABLE 5 (Con't)

<u>FILE NO</u>	<u>NAME</u>	<u>PROJECT TYPE</u>	<u>COMMUNITY</u>	<u>CRMC ACTION</u>
80-2-7	Vigra	Rehabilitate SFDU*	Charlestown	Assent
80-2-8	Simon	Rehabilitate SFDU*	Charlestown	Assent
80-2-22	Bowman	Rehabilitate SFDU*	Charlestown	Assent
80-2-1	Caprio, et. al.	Commercial addition*	Narragansett	P
80-1-21	Sion	Pool; seawall repair*	North Kingstown	Assent
80-3-9	Narragansett	Pumping station*	Narragansett	Assent
80-3-8	Providence	Fill*	Providence	P
79-11-9	LaPrade	SFPU/ISDS Site Work	Warwick	Assent
79-11-8	LaPrade	SFPU/ISDS Site Work	Warwick	Withdrawn
79-9-3	Gianotti	Rip rap	Charlestown	Ordered to Restore
79-5-31	Kaminski	Below MHW Bank run gravel	South Kingstown	Denied
80-5-9	Water St. Dock	House on new foundation*	Warren	Assent
80-9-5	Wincker	Erosion on APR	Narragansett	Assent
80-8-9	Jagaciak	SFPU/Holding tank*	Barrington	P

P - Pending

* - Started with local building permit or community sponsored

Preparation Date: November 3, 1980

Source: Division of Coastal Resources

E. Public Hearings.

Public Hearings are held on applications which incur an objection during the 30-day Notice period, or at the personal request of any Council member. All objections are considered valid, but should specifically request a hearing, a step which is not always taken by the objector.

During the sample period, December, 1979, through November, 1980, 74 applications went out to hearing. The standard operating procedure at a hearing is for three CRMC members to act as a jury or hearing body with legal counsel assistance. All hearings are recorded by a stenographer and are attended by the Division of Coastal Resources Chief, Staff Engineer, and upon request, staff biologist. A practice which is now evolving is the subpoenaing of all parties which submit signed reports for the record, regardless of content, at the request of attorneys representing the applicant or the objector. All hearings are advertised in state and local newspapers and are generally held in public buildings in the evenings. The hearings, often the result of local or neighborhood animosities, can be often characterized as stalling techniques or harassment of applicants by local parties, and generally result in little or no new information. In commercial waterfront areas such as Newport Harbor where there is economic competition, an objection from a local competitor can result in economic costs to an applicant whose project is delayed, and one can logically assume, significant economic gain to the competition.

Cases put out to hearing clearly fall into categories defining major and insignificant types of considerations. Major cases out to public hearings can be defined as all those involving one or more of the following: (1) filling below Mean High Water; (2) adverse impacts on cliffs, bluffs, salt marsh, or "contiguous wetlands;" (3) barrier beach development that conflicts with the RICRMP; (4) erosion control projects that conflict with the RICRMP; (5) major commercial boating facility expansion or development; (6) aquaculture; (7) demonstrable negative water quality impacts; and (8) any activities that causes the staff to trigger the burden of proof requirements of the RICRMP.

Based on this extensive definition, only 23 of the 74 cases in the sample period required a public hearing. This represents a 68.4 percent reduction from the 12-month experience. At the estimated cost of nearly \$600.00 per hearing (Table 9), this would be a savings of nearly \$30,000.00 over the 12-month period. This estimate fails to account for any outcome of the Foster Cove Cases, but there is little likelihood that any of those cases will be denied or severely modified as a result of the hearing process. A much more likely outcome will be assents with site impact mitigation procedures stipulated in a manner not unlike all residential development proposals. If, however, demonstrable adverse water quality impacts are determined through the Foster Cove Cases, resulting in major modification of an unforeseeable nature or outright denial, then a major precedent will be established affecting all future SFDU/ISDS proposed on coastal ponds, because similar conditions exist elsewhere, given Rhode Island's coastal geologic history.

If the CRMC were to adopt stronger policies and regulations governing urban runoff, particularly as effects water quality through storm drainage projects, or as effects certain sensitive natural areas such as the Narrow River or Coastal Ponds, only one additional case would be added to the major case definition shown in the accompanying table. The 51 cases not defined as major have probably gone to hearing at a needless expense. This conclusion is also based on the finding from a sample of those cases which went to hearing. An analysis of the findings and recommendations of the full Council decision, compared with the initial staff findings and recommendations, found no lack of cases where the decision reflects no new information obtained in the hearing and the legal staff relied solely on the staff reports. To illustrate, at the December 11, 1979, Council meeting (TRANSCRIPT, p. 32) it was revealed, as one Council member put it, "No one came to the hearing to represent the Federated Sportsmen (an objector)...so, we just talked to the applicant, and he agreed to all of the stipulations." At the February 12, 1980, meeting (TRANSCRIPT, p. 30) during the reading of a subcommittee report on a public hearing, it was revealed that: "the applicant showed and the objector didn't...We did learn that (the applicant) was a retired general. That is all we accomplished that evening."

More importantly, of those 23 cases classified as major by the definition above, 14 could possibly have been spared the public hearing process. If there were an approved aquaculture plan in force and if the three aquaculture projects were in conformance with the plan, then no hearing would have been required. Such a plan is being prepared by

the Department of Environmental Management. The eight cases on barrier beaches could also have avoided hearings based on the realization that these proposals are for dwellings which are, in fact, all permitted uses according to the RICRMP for the areas concerned, provided the standards established by the program could be met.⁴⁸ So too, with the one case affecting a nonbarrier beach feature because an alternative did exist for the applicant, thereby preventing use of the "no reasonable alternative" clause. Therefore, it is conceivable that the Council could have held only 9 public hearings during the sample period, instead of 74 for a savings to the taxpayers of nearly \$40,000.00 in hearing costs alone. This estimate does not include the cost of legal counsel for the CRMC at each hearing.

F. CRMC Project Denials.

The CRMC has denied approximately 30 cases in its ten year's experience (Table 10). This represents only 2 percent of the total number of projects that were put out to notice for public review during that period.

Project denials are "limited" to those areas where the Council has clear jurisdiction, that is, below mean high water or on or directly affecting a shoreline feature. The Decisions written for the denials are structured into sections offering the Findings of Fact and Conclusions of Law. This structure creates the framework to deliver the logic for the denial. At one time, in 1975, the Council's procedures in its issuance of decisions was chastised by the Court, because the decision before the Court was "bereft of any fact-finding" making the⁴⁹ "judicial review impossible" The decisions are now complete. The

TABLE 6

PUBLIC HEARINGS ON APPLICATIONS

FROM DECEMBER 1979 THROUGH NOVEMBER 1980

<u>FILE</u>	<u>NAME</u>	<u>PROJECT</u>	<u>LOCATION</u>	<u>CEMC ACTION</u>
79-10-2	Deweldon	56-Unit Condo.	Newport	AM
79-9-30	Gianotti	2' Stone Wall w/ Backfill	Charlestown	D/OR*
78-8-7	McNulty	Marina	Portsmouth	A
	Light House Marina	Breakwater		
78-12-4	Williams	(alleged for agri- culture 2 Pilings	South Kingstown	D
78-8-18	Readyhough, H.	SFDU/ISDS	South Kingstown	A
79-8-14	Readyhough, J.	SFDU/ISDS	South Kingstown	A
79-11-18	Lindberg	SFDU/ISDS	Narragansett	DC
79-11-19	Low	SFDU/ISDS	Narragansett	A
79-11-20	Conradi	Marina Expansion	Westerly	A
79-7-16	Carter, R.	SFDU/ISDS on BB	Block Island	A**!
79-9-17	Devereux, R.	SFDU/ISDS on BB	Block Island	A**!
79-9-18	Devereux, R.	SFDU/ISDS on BB	Block Island	A**!
79-9-3	Gasner	SFDU/Connected to Sewers on BB	Block Island	ND
80-1-1	P. Toole Realtor, Inc.	Maintenance/Floats	North Kingstown	A*
79-12-8	Smith	SFDU/Addition & ISDS	Narragansett	A
80-1-9	Quinn	Aquaculture	Quicksand Pond Little Compton	A
79-8-11	Pt. Judith Shellfish	60' Pier Extension	Portsmouth	D

TABLE 6 (Con't)

<u>FILE</u>	<u>NAME</u>	<u>PROJECT</u>	<u>LOCATION</u>	<u>CRMC ACTION</u>
79-9-32	Envine Estates	22 X 24 Garage	South Kingstown	A
79-9-5	Howard	Relocate SFDU & Build Addition on BB	Charlestown	A
79-9-6	Gencarella	30 X 30 Gravel Fill for parking	Charlestown	A
79-4-19	Montalto	Rip rap wall	Westerly	D/OK*
80-1-11	Dunhamel Trust	SFDU/ISDS	Charlestown (Foster Cove)	ND
80-1-12	Dunhamel Trust	SFDU/ISDS	Charlestown (Foster Cove)	ND
79-9-8	Keegan	SFDU/ISDS	Charlestown (Foster Cove)	ND
79-9-9	Boccuzzi	SFDU/ISDS	Charlestown (Foster Cove)	ND
79-9-10	Dunhamel Trust	SFDU/ISDS	Charlestown (Foster Cove)	ND
79-9-11	Dunhamel Trust	SFDU/ISDS	Charlestown (Foster Cove)	ND
79-9-12	Dunhamel Trust	SFDU/ISDS	Charlestown (Foster Cove)	ND
79-9-13	Hyde	SFDU/ISDS	Charlestown (Foster Cove)	ND
79-9-14	Duk Soon Kim	SFDU/ISDS	Charlestown (Foster Cove)	ND
79-9-15	Moran	SFDU/ISDS	Charlestown (Foster Cove)	ND
79-9-16	Roche	SFDU/ISDS	Charlestown (Foster Cove)	ND
79-9-28	Krouse	SFDU/ISDS	Charlestown (Foster Cove)	ND
79-9-29	Sterling	SFDU/ISDS	Charlestown (Foster Cove)	ND

TABLE 6 (Con't)

<u>FILE</u>	<u>NAME</u>	<u>PROJECT</u>	<u>LOCATION</u>	<u>CRMC ACTION</u>
79-11-11	Duhamel Trust	SFDU/ISDS	Charlestown (Foster Cove)	ND
80-1-3	Barber	SFDU/ISDS	Charlestown	A**/*
80-1-14	City of Newport	Interceptor Sewers	Newport	A*
78-1-1	Ray Cot Fiber	4500 ft. ² Fill area below MHW	Warren	D
80-2-1	Caprio et. al.	Commerical Addition	Narragansett	ND*
79-8-10	Sardelli	2640 yd. ³ Fill on Lot	Narragansett	ND
80-3-1	Nunes	Docks, floats, wall	Bristol	A
80-3-2	Nunes	SFDU	Bristol	A
80-1-21	Sion	Swimpool; seawall repairs	North Kingstown	A*
80-1-24	Prov/DEM	Gravel Road and park- ing lot	Narragansett	ND
80-3-8	Prov/DPW	Maintain Filled Area	Providence	ND*
79-4-9	Periwinkle, Inc.	Floats & Piles	Newport	A
79-7-4	South County Sand & Gravel	Rip rap Wall Piers & Floats	South Kingstown	AM
80-3-18	RIDOT Sprague Bridge	Bridge on Rt. I-A	Narragansett	A

TABLE 6 (Con't)

<u>FILE</u>	<u>NAME</u>	<u>PROJECT</u>	<u>LOCATION</u>	<u>CRMC ACTION</u>
77-1-3	Dumphy	Rip Rap Wall	South Kingstown	ND
79-5-34	North Kingstown	Mosquito Ditching	North Kingstown	A
80-3-23	Fischer/Cranshaw	SFDU/ISDS on BB	Charlestown	ND
80-4-3	Fish, J.	SFDU	Narragansett	ND
80-4-4	Fish, J.	SFDU	Narragansett	ND
80-4-5	Fish, E.	SFDU	Narragansett	ND
80-4-9	Watch Hill F.D.	16 Piles	Westerly	A
80-4-13	Kmo	SFDU/ISDS	Charlestown	ND*
79-5-37	Booth	SFDU/w/driveway through marsh	Barrington	AM
80-5-6	Shepperton	4 X 80 Pier	Barrington	A
80-1-10	Vaclavick	Relocate SFDU on BB	Charlestown	ND
80-5-12	Riener	Legalize 10,000 yd ³ Fill on Lot	Barrington	A*
80-6-12	Wilbur	SFDU/ISDS	Charlestown	PF
80-6-11	Conte	Garage, Greenhouse, Patio	North Kingstown	ND
80-6-19	Macy	Mussel Culture	West Passage	ND
79-12-3	Galilean Seafood	24 X 20 Bld. Ad.	Narragansett	A
80-7-1	Dubois	SFDU/ISDS on BB	Westerly	RS
80-7-14	Haribet	SFDU on Riener's Fill	Barrington	A
80-7-16	Gray	3 SFDS's	Barrington	A
79-9-26	Russ-Russ Realty	3100 yd ³ Fill below MHW	Bristol	ND

TABLE 6 (Con't).

<u>FILE</u>	<u>NAME</u>	<u>PROJECT</u>	<u>LOCATION</u>	<u>CRMC ACTION</u>
80-7-21	Agnoli/Guisti	SFDU/ISDS on Sand Spit	Warwick	ND
80-7-19	Galilee Beach Company	Private Property Sign on Beach	Narragansett	BB
80-8-6	Laraleus	Private Property Sign on Beach	Narragansett	BB
79-5-31	Kaminski	Fill below MHW	South Kingstown	D*
79-2-14	RIDOT	24" Outfall	Warwick	A
80-7-18	Malenfant	Rip rap wall Below MHW	South Kingstown	ND

Total Applications to Hearing in Sample Period: 74

NOTES: A - Assent
D - Denied
DC - Discharged
AM - Assent with major modifications
D/OR - Denied/Ordered to Restore
ND - No Decision as of preparation date (12/1/80)
* - Project started without CRMC approval
** - Full Council overturned subcommittee report
‡ - Appealed to Attorney General Environmental Advocate by Department of Environmental Management
PP - Hearing Scheduled, Then Postponed.
RS - Hearing Held; Applicant resubmitted plans.
BB - Barrier Beach

SOURCE: Division of Coastal Resources Files.

Preparation Date: March 21, 1981

TABLE 7

MAJOR CASES OUT TO PUBLIC HEARING
DURING SAMPLE PERIOD
DECEMBER 1979 - NOVEMBER 1980

FILLING PROPOSALS:

Ray Cot Fiber
 Russ-Russ Realty
 Kaminski
 Malenfant
 Gianotti

AQUACULTURE:

Quinn
 Williams
 Macy

PROJECT ON BARRIER BEACH:

Daraleus¹
 Galilee Beach Company¹
 Carter⁴
 Devereux⁴
 Devereux⁴
 Gasner²
 Vaclavick²
 Dubois²

PROJECT AFFECTING PHYSIOGRAPHIC
FEATURES (Other than Barrier
Beaches)

Deweldon
 Booth³
 Agnoli/Guisti

EROSION CONTROL PROJECTS:

Montalto
 South County Sand & Gravel

MARINA DEVELOPMENT

Point Judith Shellfish Company
 McNulty

- (1) Would not be major if RICRMP had specific prohibitions on these projects (private property signs on barrier beach). Hearing based on precedent setting nature of projects.
- (2) Should not be considered major because the barrier beaches are classified as "developed" where these projects were introduced. Cases went to hearing because the applicant chose to try to build on a Dune which is a prohibited use according to the RICRMP, Section 120. 0-2, or in the Gasner Case, is on the "back side" of the Barrier and went out to hearing partly because of an unwritten policy to put all barrier beach cases out to hearing, and partly because of local problems.
- (3) Should not be considered major. The project conflicted with the RICRMP and was modified to conform to the staff recommendations.
- (4) Major because the applicants chose to build on a dune, a prohibited action. This barrier beach is described as a developed barrier and as such, residential development is permitted by the RICRMP. The RICRMP also shows the priority for use of the beach as Conservation Use.

TABLE 8

CATEGORIZATION OF ALL CASES OUT TO PUBLIC HEARING
DURING SAMPLE PERIOD
DECEMBER 1979 - NOVEMBER 1980

BELOW MHW
FILLING PROPOSALS

Ray Cot Fiber
 Russ-Russ Realty
 Kaminski
 Malenfant
 Gianotti

COMMERCIAL BOATING
FACILITIES

Pt. Judith Shellfish
 McNulty
 P. Toole Realtors
 Periwinkle, Inc.
 Watch Hill F.D.
 Conradi
 Nunes

EROSION
CONTROL

South County
 Sand & Gravel
 Montalto
 Dunphy
 Haribet

POTENTIAL
WATER QUALITY IMPACTS

Readyhough, H.
 Readyhough, J.
 Lindberg
 Low
 Smith
 Dunhamel Trust + 5
 Keegan
 Boccuzzi
 Hyde
 Kim
 Moran
 Roche
 Krouse
 Sterling
 Dunhamel
 Nunes
 Kuno
 RIDOT Outfall

PROJECT ON
BARRIER BEACH

Daraleus
 Galilee Beach Company
 Carter
 Devereux
 Devereux
 Gasner
 Vaclavick
 Dubois
 Howard
 Fisher/Cranshaw
 Wilbur
 Galfilean Seafood

ACTUAL OR POTENTIAL
ADVERSE IMPACT ON
PHYSIOGRAPHICAL
FEATURES ON MHW

Deweldon
 Booth
 Agnoli/Guisti
 City of Newport
 Sion
 North Kingstown
 Fish, J.
 Fish, J.
 Fish, E.
 Envine Estates
 Genoarella
 Barber
 Caprio
 Sardelli
 Providence/DEM
 RIDOT Bridge
 Conte
 Gray
 Reimer
 Providence DPW

CUMULATIVE
IMPACT ISSUE

Shepperton

AQUACULTURE

Quinn
 Williams
 Macy

TABLE 9

ESTIMATED COSTS FOR A PUBLIC HEARING*

<u>CATEGORY</u>	<u>COST</u>
1. Copying Cost of Hearing Notice (130 copies).....	\$ 7.00
2. Mailing, including postage.....	22.50
3. Arrangements and deliveries.....	15.00
4. Advertisements.....	60.00
5. Publication of 24 sets of Application File.....	45.00
6. Average of 3 CRMC members in attendance at \$50.00 each...	150.00
7. Stenographer at \$2.25/page, plus \$100. to show.....	212.00
8. Overtime for State Civil Engineer.....	50.00
9. CRMC members' mileage at 20 cents per mile.....	15.00
10. Executive Director's Mileage.....	5.00
11. Division Chief's Mileage.....	5.00
12. Staff Engineer's Mileage.....	5.00

ESTIMATED TOTAL COST \$591.50

SOURCE: Division of Coastal Resources, estimate by administrative personnel.

* Mileage costs are estimated at 25 miles per person per hearing. Actual cost were not available, and this estimate is considered to be extremely conservative. To illustrate, for example, the conservative, there have been 10 hearings on Foster Cove, Subdivision, in Charlestown, Rhode Island. The Executive Director travels from Tiverton (97 miles), the Division Chief travels from Providence (83 miles), the Staff Engineer from Johnston (81 miles), a CRMC member from Westerly (26 miles), a CRMC member from North Kingston (39 miles), and a CRMC member from Warwick (50 miles). Distances shown are round-trip estimates on major highways from generalized trip termini. Total average mileage is 60 miles per person. Nor does the total include the cost of the CRMC legal counsel present at each hearing.

logic for denial is typically based upon conflict with the plan, failure to meet evidentiary burdens of proof, a determination that the project will make areas unsuitable for uses and activities designated by the management program, and/or that the coastal resources in a specific area are not capable of supporting a proposed activity.

The Council's denials in two major cases involving filling and/or residential construction in coastal wetlands have been upheld in Court. In Dalmazio O. Santini v. John A. Lyons, et. als. (C.A. No. 74-3158, C.A. No. 74-3159, and C.A. No. 79-1162), the constitutionality of the Council was upheld as was its authority to restrict the use of the marsh. The Court found that the applicant's "only restriction is that he may not destroy a coastal wetland or introduce pollutants in the waters that surround it."⁵⁰ The taking issue was dismissed in this case. In Sebastian Milardo v. The Coastal Resources Management Council, et. als. (C.A. No. 77-735, and C.A. No. 77-2245), the Court found that "the creation of classifications based upon reasonable considerations is not unconstitutional," and the CRMC is "not denying the plaintiff all beneficial use of his land, it is only denying the opportunity of introducing pollutants into a public ocean area and a protected marshland area. This it has the lawful right to do..."⁵¹

The constitutionality of the Council was also upheld in John A. Lyons, et. als. v. Nancy Fillmore (C.A. No. 72-182). The Court noted there is a distinction between eminent domain and police power. The power of eminent domain, the Court stated, recognizes the right to compensation while police power does not. Compensation arises when restric-

tions are placed on a property to create a public benefit rather than to prevent a public harm.⁵² The Court noted in Nancy B. Fillmore v. John A. Lyons, et. als. (C.A. No. 73-2373) "that building permits lawfully issued for a permitted use should be immune to impairment or revocation by reason of a subsequent amendment to the zoning ordinance when the holders thereof...initiate construction."⁵³ The Council's Cease and Desist Order on construction which had started on Green Hill Barrier Beach (South Kingstown) in the Fillmore Case was lifted by the Court ruling in favor of the Plaintiff.

The Court ruling in the Fillmore Case has been cited by the Council as justification for allowing new construction on Coast Guard Barrier Beach (New Shoreham). The Council wrote to the Providence Journal Company in September, 1980, that it "cannot ignore the Superior Court ruling that provides owners of developed barrier beaches a right to utilize their property. The only legal alternative that CRMC has, is to purchase such property outright."⁵⁴ This position appears to be supported by the Superior Court Decision on Annicelli, which found that a South Kingstown zoning ordinance prohibiting all construction in high flood danger (HFD) areas—namely, barrier beaches. This includes Green Hill Barrier Beach, and the Court declared the ordinance as "an indirect, confiscatory taking of her property, without just compensation," and concluded the town must exercise eminent domain if it wishes to retain the barrier beach in its present state.⁵⁵ This decision is being appealed by the town and Amicus Briefs have been planned by the CRMC, the Rhode Island State-

wide Planning Program, the Rhode Island State Department of Environmental Management, NOAA, and the Vermont Environmental Law School.

A pattern of confusion emerges from these cases with regards to the CRMC's ability to determine highest and best use of precisely the resources it has clear jurisdiction over. The taking issue has been successfully handled in decisions involving marshes, but not yet in cases involving barrier beaches. Regulation of these physiographical features and, particularly barrier beaches, appears to be at the legal "frontier" in Rhode Island. Certainly, property owners must beware when they decide to alter for private use either a marsh or a barrier beach. The costs involved in legal fees and retaining expert witnesses can be high.⁵⁶

Five Council decisions are instructive of what an applicant may expect. By examining each case on its merits, the CRMC technically cannot be influenced by another decision it renders elsewhere. This issue is not so much the focus of these illustrations, as are the issues of a haphazard approach to the RICRMP requirements and discretionary action on the part of the CRMC.

In 1979, the Rhode Island Yacht Club proposed a major project at its facility in Stillhouse Cove in the Providence River, Cranston. The waters are classified by the RICRMP as an Urban Estuary, and shoreline dependant commerce and industry and the maintenance and expansion of appropriate recreational opportunities are cited as compatible uses of the water.⁵⁷ The Yacht Club is the oldest in the State of Rhode Island, and the third oldest in the Country.⁵⁸ It was acknowledged

by the objectors to the proposal to have been "floundering for many
"59
years.

A major aspect of the proposal was the placement of 4,000 cubic yards of fill into Stillhouse Cove to create some additional space for the Club. This was objected to by local residents as the Cove is "probably the only cove in the City of Cranston where the public can go and view its natural resources."⁶⁰ It was argued by a CRMC member that the Council's charge is, in part, to assure "all plans and programs shall be developed around basic standards and criteria included...the last of which reads consistency with the Statewide Plan," which contains a policy against filling coastal waters and wetlands.⁶¹ The Yacht Club proposal was approved, modified to not include the fill below mean high water.

The same night the Council denied the Rhode Island Yacht Club permission to fill 4,000 cubic yards in Stillhouse Cove, they approved Marine Systems, Inc.'s proposal to place an unspecified amount of fill in an "area 200 to 180 feet long by 30 feet deep,"⁶² in Point Judith Pond, an Area for Preservation and Restoration, and a Multiple Use Recreation Coastal Pond where the deposition of fill is a low priority use described by the RICRMP to "have the potential to disrupt or destroy the primary value of these estuaries and coastal ponds..."⁶³ The Staff Biologist stated: "There is a significant area of fill to be placed in the shallow water area or what we call or refer to as the littoral zone and this area has the potential of supporting a large population of marine animals."⁶⁴ But, the CRMC approved the fill, based on the applicant's statement that if he were to modify his pro-

posal in accordance with the Staff Biologist's recommendations, it would "cause us financial problems,"⁶⁵ and a Council member from the locale speaking on behalf of the applicant: "Their proposal, I think, would be consistent with the type of establishments that are in the area at the present time."⁶⁶

Noting the earlier decision to deny fill in Stillhouse Cove because it violates the State Guide Plan, one Council member stated that "the Council would be putting itself in an awful position to approve" the Marine Systems proposal.⁶⁷ The Statewide Planning Program did not reference the Shore Region Policy to prevent filling of Coastal Waters and Wetlands in either case. Importantly, there was strong local objections to the Yacht Club, while only the staff objected to the Marine Systems project.

In July, 1977, approximately one year before the RICRMP was approved by OCZM, the Council granted an assent for a single-family dwelling and ISDS on a barrier beach in Charlestown, Rhode Island.⁶⁸ The proposal had received an objection from the Statewide Planning Program. In the review of the 1977 cases on file at the Division of Coastal Resources, it was found that in that year the state planning agency commented on slightly more than half the cases on file. When it did comment, the planning agency offered major or substantive recommendations for denial or requested that applicants be required to meet their burdens of proof (Table 14). Those comments were particularly directed to construction on barrier beaches and the planning agency suggested that if the CRMC feared the taking issue, there was environmental case law in other states that may be of benefit to the

Council if it sought denial of barrier beach construction.

The assent for the dwelling and ISDS expired and was renewed to July 14, 1979. The Assent and Renewal had stipulated only that the applicant maintain the project and that the Council be notified when construction was to commence and end.⁶⁹ Because the Assent expired a second time, and the applicant had not initiated construction, a new application for the project was filed. The project was put out to a public hearing on November 15, 1979, and the CRMC subcommittee recommended to the full Council that the application be denied because "although the applicant was given every opportunity to present evidence in furtherance of this application, the record does not indicate that said evidence was presented, (and) that the recommendations and reports...do not indicate that the activity proposed will be suitable for the coastal region."⁷⁰

When the Council moved to accept the recommendations of the subcommittee, it was pointed out by a CRMC member that the record clearly indicated that an Assent had been granted for the particular activity.⁷¹ The Council then effectively dismissed the recommendation to deny the proposal, even though that subcommittee had found that the RICRMP evidentiary burdens had not been met,⁷² and the Chairman of the Council issued a letter of Assent extension. The extension added four new stipulations governing building elevation, site disturbance, protection of the dune, and use of vehicles and equipment.⁷³ The Assent was extended again a year later "with all other provisions of the original (emphasis added) Assent remaining the same,"⁷⁴ thereby negating the stipulations of the extension granted a year earlier.

The Council demonstrated extreme latitude in this case. In another situation, an applicant had allowed an Assent to expire, and it was stated that "we can't extend something that has expired. We resolved that some time ago."⁷⁵ The two actions do not appear at all consistent with each other, and one clearly appears to be not consistent with the RICRMP.

The Council denied a project for a "floating dock, 4-foot wide, and 20-foot long to be built between two existing pilings near an already existing dock, and two 4-foot wide, 20-foot long sections to be placed beside this stationary dock" proposed for the Pawtuxet Cove portion of the Providence River Urban Estuary.⁷⁶ The Council based its denial on evidence that "the coastal resources would not be enhanced, nor would they be increased in any aesthetic or recreational value and would, in fact, be detrimentally impacted if this activity were to be allowed."⁷⁷ The Council concluded that "the evidence does not show that the coastal resources in the specific area are capable of supporting the within activity," and "more specifically, the applicant has failed to demonstrate the effects the proposed activity will have on the coastal resources."⁷⁸

The proposal was, however, consistent with the RICRMP which finds that the maintenance and expansion of appropriate recreational opportunities are compatible with the Urban Estuary designation of the Cove.⁷⁹ In 1981, the CRMC approved a 165-foot pier extending into Pawtuxet Cove on the property directly adjacent to the property involved in the denial.⁸⁰ One difference between the two cases was the local objection

TABLE 10

CRMC PROJECT DENIALS

<u>YEAR</u>	<u>NAME</u>	<u>PROJECT TYPE</u>	<u>WATERBODY/COMMUNITY</u>	<u>FILE NO.</u>
1973	Stringer ²	SFDU/ISDS	Point Judith Pond/---	73-7-10
1973	Lambert ²	SFDU/ISDS ¹	---/---	73-8-17
1974	Santini ²	FILL MARSH	Point Judith Pond/Narragansett	74-3-3
1974	Kaserch ²	PIER	Green Hill Pond/South Kingstown	74-3-11
1974	C-Lark Marina	BULKHEAD & FILL BELOW MHW	Warwick Cove/Warwick	74-2-6
1974	Flore ²	PIER	Pawtuxet Cove/Warwick	74-10-10
1974	Jazlowiecki ²	SFDU/ISDS	Green Hill Pond/South Kingstown	74-10-9
1975	Stellitano	FILL MARSH	Winnapaug Pond/Westerly	75-5-6
1975	Pond ²	SEAWALL	Block Island Sound/Westerly	75-11-2
1975	Milardo ²	SFDU/ISDS	Winnapaug Pond/Westerly	75-5-20
1976	J.J.J. Corp ²	DREDGE	Wickford Harbor/North Kingstown	76-1-7
1977	City of Newport	FLOATING PIERS	Newport Harbor/Newport	77-9-4
1977	Quidnesset Properties	FILL MARSH	Tibbets Creek/North Kingstown	77-5-19
1977	Orzech	RIP RAP ¹	Block Island Sound/Charlestown	77-12-4

TABLE 10 (Con't)

<u>YEAR</u>	<u>NAME</u>	<u>PROJECT TYPE</u>	<u>WATERBODY/COMMUNITY</u>	<u>FILE NO.</u>
1977	Krohn	RIP RAP ¹	Block Island Sound/Charlestown	77-12-5
1977	DiGiulio	RIP RAP ¹	Block Island Sound/Charlestown	77-12-6
1978	Coit	SFDU/ISDS ¹	Block Island Sound/Charlestown	78-4-11
1978	Burdick	ISDS	Ninigret Pond/Charlestown	78-9-2
1978	Barnack	CONCRETE BOAT SHED	Ninigret Pond/Charlestown	78-11-10
1979	Vare	SFDU/ISDS	Pettaquamscutt River/Narragansett	79-2-1
1979	Montaquila	SFDU/ISDS ¹	Block Island Sound/Charlestown	79-7-7
1979	Williams	Pilings	Potter Pond/South Kingstown	78-12-4
1980	Ventura	4' X 20' Floating dock w/2 4 X 20 sections	Pawtuxet Cove/Warwick	79-7-19
1980	Behneke	SFDU/ISDS	Green Hill Pond/South Kingstown	79-7-10
1980	Ray Cot Fiber	Retaining wall and fill in	Warren River/Warren	78-1-1
1980	Montalto ³	RIP RAP	Winnapaug Pond/Westerly	79-4-19
1980	Point Judith Shellfish	PIER, FLOATS, PILES	Sakonnet River/Portsmouth	79-8-11
1980	Gianotti ⁴	WALL, BACKFILL BELOW MHW	Ninigret Pond/Charlestown	79-9-30

TABLE 10 (Con't)

<u>YEAR</u>	<u>NAME</u>	<u>PROJECT TYPE</u>	<u>WATERBODY/COMMUNITY</u>	<u>FILE NO.</u>
1980	Piemonte ⁵	RETAINING WALL IN FILLED MARSH	Foster Pond/South Kingstown	80-3-11
1980	Kaminski	FILL BELOW MHW	Potter Pond/South Kingstown	79-5-31

NOTES:

- (1) Project on Barrier Beach
- (2) File not located
- (3) Completed w/o Assent: Ordered to restore 3/11/80; No compliance 11/12/80
- (4) Completed w/o Assent: Ordered to restore 3/11/80. No compliance 11/12/80
- (5) Discharged with prejudice; Order to Restore after State Properties Committee refused to legalize it by lease agreement,

to the case that was denied. No objection was voiced to the project that received approval. The Council's findings in the denial that "It further came to light (at the public hearing September 26, 1979) during the testimony that certain docks and piers have on various occasions been placed in the within area without the benefit of a permit from this Council,"⁸¹ may be totally irrelevant to the decision, yet appears to be a factor in arriving at the decision to deny.⁸²

G. Conclusion on RICRMP Implementation Based on Case Load Analysis.

I. "Landside" Implementation: Program Impact.

The review of the history of the Rhode Island Coastal Resources Management Act of 1971 clearly shows that a major reason the legislation failed to pass in 1970 was the provision for state authority inland to 200 feet or to elevation of 20 feet mean high water, whichever is greater. That legislation was rewritten to exclude the inland boundary by keeping the boundary at MHW where the state had clear historical jurisdiction.⁸³ It then included the specific activities or land uses and physiographical features.

When the state drafted the RICRMP, the 200-foot inland boundary was devised to demonstrate to OCZM that the Rhode Island Program was not simply a "wet area" program, but that it could also regulate land uses that impact on the coastal environment. The 200-foot line was chosen because it can be demonstrated that activities within that zone can impact on coastal waters and physiographical features. For instance, Section 310.4-1A of the RICRMP finds that nitrate from septic systems have been found to travel as much as 200 linear feet through soil below the root zone, and that nitrate appears to be something

of a concern because it contributes to phytoplankton growth and eutrophication.

What the RICRMP did in 1978, therefore, was to administratively capture for the state a portion of the land that the General Assembly refused to grant legal authority for eight years earlier. It could be argued by the cynics that the move was made only to capture federal program dollars under Section 305 (CZMA). It could also be argued that it was done to control land use, and, thereby regulate impacts on the shoreline, physiographical features and coastal water quality, and to insure compatible use. This argument is presently utilized, and not without good reason. But, if it is to be wholeheartedly accepted, one would be expected to ask what the outcome is or how, in fact, does regulation of this zone occur? This question is poignant because land management in Rhode Island has repeatedly failed to gain acceptance in the Rhode Island General Assembly.

From 1969 to September, 1979, the CRMC application rate for single-family dwellings (SFDU) and septic systems (ISDS) was 16 percent.⁸⁴ This rate increases when the period is shortened to 1975 to September, 1979, when it then measured at 20 percent.⁸⁵ And, when measured from May, 1978, to September, 1979, (a period of 16 months after Section 306 Approval), the rate swells to 38 percent of all applications.⁸⁶ From December, 1979, to October, 1980, 119 of 216 Notices involved single-family dwellings and/or ISDS or accessory structures, for a total of 55 percent of the case load.⁸⁷ And, during the period July, 1979, through August, 1980, 53 percent of the Letters of No Objection have been for activities involving single-family dwellings and/or ISDS or accessory structures.⁸⁸

There is no question that local zoning dictates the land-use patterns. Therefore, if an individual proposes a land activity that is compatible with the local zoning requirements, the CRMC Assent is almost assuredly guaranteed, except in special cases directly on a physiographical feature, and even then, denial is not an expected outcome. In these typical, nonspecial cases, applicants for single-family dwellings, septic systems, porches, garages, decks, building additions, major and minor repairs, patios, greenhouses, vegetable gardens, etc., are assured that if they (within 200 feet of a coastal physiographical feature) submit plans, have local approvals, write a check for \$35.00, and are willing to wait out a 30-day Notice period, wait the necessary 30 to 75 days (in instances of most uncontested cases), and an indefinite period of time, more than 75 days in contested cases, they will receive an Assent which typically has the following stipulations:⁸⁹

- (1) A vegetative buffer zone (typically 50 feet, but varies according to site conditions) shall be maintained;
- (2) A line of stacked hay bales shall be installed at the seaward edge of the construction area prior to construction;
- (3) All disturbed areas shall be revegetated immediately after grading is completed and that all grading shall proceed as soon as possible after construction is complete;
- (4) All excess debris shall be disposed of at a suitable upland disposal area;
- (5) All fill (if it is used) shall be clean and free of matter, that will cause pollution of the water of the state; and

- (6) The dwelling shall be elevated to or above the base flood elevation established by the Flood Insurance Rate Maps, and in accordance with the provisions of the Rhode Island State Building Code Rules and Regulations for Construction in Flood Hazard Areas.

One picture obtained from the data is that the RICRMP and the CRMC is clearly involved in the land side of the coastal zone, trying to regulate residential development, and rightly so. The procedures of this involvement are very predictable, and produce results that are: (1) only consistent with the local land use predetermination; and (2) only involve site impact mitigation.

2. Programmatic Deviations and Inconsistencies.

Another conclusion presented by the case load analysis is that the CRMC has developed a pattern of issuing assents that appear to be inconsistent with the RICRMP policies and regulations. These apparent inconsistencies are not confined to any particular project type or location; they affect water bodies and physiographical features as well as various project types. Others are discussed in Section F.

a. Central Barrier Beach: Geographic Area of Particular Concern.

Events on Central Barrier Beach, Charlestown, reflect several of the problems faced by the Rhode Island Coastal Program. These include the programmatic inconsistency issue, especially, but also point to the supremacy of local decision making and the problem of the CRMC going last in permit scheduling. The culmination of separate uncoordinated decisions on Central Beach has effectively

stripped the management program of its power to manage this barrier.

In late 1979, a letter of No Objection was sent to the new property owners of several parcels of land on the Barrier granting permission to implement "repairs to an existing rip rap wall...(with) no material to be placed below MHW."⁹⁰ The letter acknowledged that there was a definite potential for erosion to be caused by the rip rap. If offered some engineering advice stating that said advice may "maintain proper wall stability (and that) dune grass vegetation should be established upland of the wall."⁹¹ This language is at best permissive.

The RICRMP Section I40.0-2-C.3 specifically prohibits the use of structural erosion controls on Central Beach, and others, unless there is a demonstration "by probative evidence lack of available sediment for such nonstructural methods" or vegetation, fencing, and sand bags. The staff engineer reported on this case prior to the issuance of the letter that "rip rap protection in various state of disrepair and completeness is found along the total length of the applicant's property (and) the presence of several natural (assumed) boulders which form a type of incomplete natural barrier."⁹² The engineer went on to report that "600 tons of rip rap would be used for the project (and that) it is unclear as to (whether) an existing incomplete rip rap cover constitutes nonstructural protection according to CRMC regulations."⁹³ No effort was made to require the applicant to meet the evidentiary burdens.

More than a year later, the staff engineer reported that "This seawall was granted as a 'repair,' but is essentially new construction. Various stipulations on the repair have not been met."⁹⁴

He reported that the wall was constructed vertically instead of on a 2:1 slope as permitted by the letter. No dune vegetation was established. Unauthorized fill was utilized, and the location of the wall was seaward of the dune, rather than shoreward as authorized.⁹⁵

The report continued: "It is uncertain as to what action the CRMC intends to prove with regard to the above violation."⁹⁶ The memo reporting this information was filed with the original Letter of No Objection. The staff biologist, while investigating another project proposal in the area, reported that "the extensive retaining wall along this shore was installed approximately 1½ - 2 years ago, following issuance of a "Letter of No Objection" by the CRMC. Portions of this wall further to the west extend below the MHW mark and have all but eliminated sections of the beach through erosion."⁹⁷

It is this latter phenomena that the regulations of Section 140.0-2 were designed to prevent.

The problems on Central Barrier Beach are not confined to the rip rap. As the rip rap saga unfolded, the property owners resold the individual house lots, which included at least eight separate properties with single-family dwellings and ISDS, (Table 12). The new property owners, in accordance with the provisions of the purchase agreement, commenced to rehabilitate the dwellings. Work proceeded until halted by a CRMC Cease and Desist Order. The local

building inspector had issued the local permits which allowed work to proceed without the necessary state approval. This is an excellent example of the confusion that results in this dual jurisdiction area where, by virtue of the State's Coastal Management Act, the state has primary jurisdiction. In a letter to the CRMC, the local Building Inspector advanced the following defense of his actions: "I did not realize that a person had to make application to the CRMC to protect and improve his property on a developed barrier beach."⁹⁸ More than just protection and improvement, these dwellings arguably underwent substantial rehabilitation. That is, the work constituted a cost more than 50 percent of the fair-market value of the original structure. In such cases, the RICRMP Section 130.0-2 requires that the structures be elevated an additional 6 feet above the flood elevation established by the National Flood Insurance Program. By avoiding the substantial rehabilitation criteria, the additional elevation requirements were side-stepped.

The building inspector continued: "The tax revenues on these properties will double in value, too, giving Charlestown a more aesthetically pleasing area, a more healthy leaching system, as well as contributing to the tax revenue appreciated by the town."⁹⁹ This may not be first-rate writing, but it certainly conveys the idea that the town's interest in these properties resides in their contribution to the tax base. For a community with few resources and a shallow tax base, the retention of control over these properties is a primary concern, regardless of what the state coastal management program says. The administration of the management program,

in a manner inconsistent with adopted prohibition and stringent tests, aids and abets this form of localism.

The problems with a state program that cuts across traditional jurisdictional boundaries was seen in Florida three years ago. Governor Rubin Askew declared in 1978 that the Coastal Program "will give lasting consistency and direction to the landmark laws we have enacted over this decade of environmental reform."¹⁰⁰

However, a spokesman for one of Florida's largest developers, a former government administrator of the Florida Land and Water Management Act, declared the Coastal Program to be "very inconsistent (and) duplicative...We don't need any more regulation in the coastal zone, he said, because we have enough regulation now."¹⁰¹

A lobbyist for the Florida County Commissioners stated that "The subject is one that goes so directly to local control of local land development that we simply aren't prepared to talk about what's in the long-range interests of the state at this time."¹⁰²

Writing on the Coastal Zone Program nationally, Daniel R. Mandelker states that "the record is not altogether encouraging. An ambiguous statute, indecisive administration by the national coastal office, and increasing political resistance have produced a mixed record."¹⁰³ To this, we might add indecisive administration at the state level. Sara Chasis has been especially critical from her position in NRDC. She has accused the national program of not fulfilling its promise because it is not protecting valuable resources,¹⁰⁴ and feels that it will become a "paper planning process" that states

go through "to qualify for federal funds, with minimal changes in the way human activities affecting the coast are conducted."¹⁰⁵

b. Conservation/Low Intensity Use Coastal Waters.

Another situation where the CRMC has obviously acted in a continually inconsistent manner with the adopted policies and regulations of the RICRMP affects the Conservation/Low Intensity Use tidal waters and coastal ponds. Section 110.0-20.1a of the Program permits stormwater runoff, deposition of fill, dredging, and structures in navigable waters "only upon demonstration that a bona fide benefit to the public welfare will result and further that no reasonable alternative exists.

One such tidal area, designated as a conservation/low intensity use area, is the Barrington River. Since 1979, the CRMC has issued assents for at least 11 projects in the River (Table 11). Seven of these can be classified as new structures, one of which involved filling below mean high water, an area of approximately 570 square feet, rather than require the applicant to utilize another approach to repair a deteriorating man-made structure. There is no evidence on file or in the transcripts explaining why these programmatic deviations have occurred.

If one accepts the argument that the state went through an extensive planning and public participation/education process utilizing \$1.5 million in federal funds and \$500,000 in state funds to produce an acceptable management program, then one

could logically assume that the policies and regulations set forth in 110.0-2-D-1a of the Management Plan reflected a desired public goal for conservation/low intensity use waterbodies. Deviation from this, that is, the granting of special exceptions should occur only when the evidentiary burdens of proof were met. The evidence does not reflect such measured decision-making.

The case of granting an Assent for an aquaculture project in Quicksand Pond, Little Compton, is again illustrative of this disregard for the requirements of Section 110.0-2-D-1a. It also may reflect a cause of the deviation: the ignorance of the requirement. Quicksand Pond is a conservation/low intensity use coastal pond designated by the RICRMP as an Area for Preservation and Restoration. It is an Audubon Society Natural Area. The State Guide Plan classifies all the land surrounding the pond in an open-space category, and the town has the land zoned for residential low intensity development. ¹⁰⁶

This project received an intense objection from the Rhode Island Audubon Society as well as from some local property owners. The Audubon Society objected on several grounds which included the sufficiency of data supplied by the applicant. ¹⁰⁷

The larger issues cited were much more to the point of having a coastal management program and living with it in a consistent manner. The Audubon Society Executive Director objected to "allowing, especially through the questionable device of multiple 'experimental' permits, the beginnings of commercial exploi-

TABLE 11
PARTIAL LIST OF ASSENTS FOR
STRUCTURES IN BARRINGTON RIVER
SINCE 1979

<u>ASSENT NO</u>	<u>NAME</u>	<u>ACTIVITY</u>	<u>OVERALL EXTENSION FROM SHORE</u>	<u>SHORE</u>
(Approved 3/24/81)	Hartley	Rebuild pier, dock floats, ramp, pil- ings	46'	west
(Approved 2/24/81)	Mainella	Rearrange dock con- figuration	105'	east
8-BR-81	Gemma	3' X 190' pile revetment; 16' pier extension (approx- imately 570 ft. ² fill below MHW)	39'	east
89-BR-80	Cambria	Pile and timber pier extension	60'	west
165-BR-80	Shepperton	Ramp, pier, float	80'	east
151-BR-80	Barton	Pier, float	54'	west
30-BR-80	Harris	Pier, float	69'	west
52-BR-80	Barrington Y.C.	Floating dock	149'	east
19-BR-80	Ashworth	Piers, floats	110'	west
156-BR-79	Resmini	Pile & Timber Pier	42'	west
(Approved 4/14/81)	Resmini	30 ft. extension to pile and timber pier		

Preparation Date: 4/14/81

tation in any of the few remaining natural and unspoiled brackish ponds in Rhode Island (which) does not seem to us to be a wise interpretation of the Council's larger mandate."¹⁰⁸

The proposal appeared to be consistent with the Council's priorities for uses in conservation/low intensity use water bodies, at least in the sense aquaculture is not cited as either a high or low priority use.¹⁰⁹ However, as it involves the placement of aquaculture rafts (structures) in navigable waters, the issue was never addressed.

c. Coast Guard Barrier Beach: Geographic Area of Particular Concern.

Coast Guard Barrier Beach is classified by the RICRMP, Section 130.0-2A, as a developed barrier beach. It is also designated for conservation uses by the priorities for Use Maps in the program. These goals conflict in that one allows residential development and the other implies, at least, no development. Since the RICRMP was adopted, the CRMC has received eight applications for development on this barrier, five of which have been for new construction (four new single-family dwellings with ISDS and one barn).

The first application for an SFDU/ISDS received by the Council occurred in late 1978, and received an assent in November of that year. The assent stipulated that only the minimum area for construction be cleared and that all areas disturbed during construction be restored through the reestablishment of beach grass.¹¹⁰

These stipulations were in accordance with the staff biologist's recommendations. The file contains no evidence that the RICRMP programmatic requirements were considered although the comment from the Rhode Island Statewide Planning Program states: "This proposal is for a home on a barrier beach, therefore, all Council barrier beach policies and regulations apply."¹¹¹

The reports in this file do not specifically state that the Plumb residence was proposed to be located on a sand dune. However, analysis of the site plan and comparison to information on subsequent cases, indicate that the dwelling was proposed on sand dunes as defined by Section 120.2B of the RICRMP. Section ¹¹² 120.0-2D-1C of the RICRMP states:

Construction or alteration of sand dunes shall be prohibited, except where associated with an approved restoration or stabilization project or where demonstrated necessary to promote or protect the public welfare, and then only when no significant damage to the coastal environment will result. In such cases, the Council may allow temporary alterations where adequate assurance is provided that the altered area will be returned, restored and stabilized to approximate its natural state as it existed prior to the alteration.

And Section 130.0-2A1 specifically states that "Construction, restoration and/or substantial improvement of structures on the beach face or dunes shall be prohibited."¹¹³ The assent clearly appears to be inconsistent with two sections of the adopted management program.

A year after the assent was issued, the applicant Plumb was contacted by the CRMC because conditions at the dwelling site were found on November 7, 1979, to indicate that restoration had not

114
occurred as stipulated. And, again, another year later, it
was reported that the conditions of the assent "have not been
adhered to, and that activity beyond the extent of the assent
115
has taken place.

Less than one year after Plumb received an assent, the
CRMC put out to Public Notice three proposals for single-family
dwellings and ISDS, bringing to four, the number of dwellings
116
to be constructed within a stretch of 1500 feet of barrier beach.
They were approved on August 26, 1980, after a lengthy hearing
process.

On August 28, 1980, it was reported that the Director of
the Rhode Island Department of Environmental Management wrote to
the state's Attorney General requesting it be determined whether
117
the CRMC violated its own policy. The vote to approve the ap-
plication was noted by the press to be marked by two Council mem-
bers, who had signed a subcommittee recommendation to deny, revers-
ing their stance and voting for the petition. One of the changed
votes was cast by the Chairman who later wrote to the press that
"the Council cannot ignore the Superior Court ruling that provides
owners of developed barrier beaches a right to utilize their pro-
perty."¹⁸⁸ (It is important to observe that utilization is not
defined as construction of single-family dwellings with ISDS.)

The Providence Journal Company, in an editorial, declared
that the action of the Council was "not only hard to understand,
but incomprehensible!"¹¹⁹ The DEM's former chief legal counsel

wrote to The Providence Journal that the CRMC's action not only ignored its own policies, but it ignored recent case law which rejected the contention that applications must either be approved or the property purchased.¹²⁰ The Attorney General was reported as saying he believed "that prior Superior Court decisions do not so severely restrict regulation of building on barrier beaches."¹²¹ He concluded that "judicial review of the CRMC approvals will act to clarify the regulations concerning development on barrier beaches, and will act to clarify Rhode Island law regarding the public's interest in preserving our shoreline."¹²² These cases are pending court action.

It should be noted that Coast Guard Barrier Beach has been under active consideration by the U.S. Department of the Interior, National Park Service for inclusion in the Barrier Islands National Park.¹²³ This program has received strong support from the CRMC.¹²⁴

Subsequent to the Council's action to approve the three dwellings and ISDS's, there have been applications for a barn, landscaping, and two single-family dwelling additions on this barrier beach.¹²⁵ The two dwelling additions were started without a CRMC assent, and one was halted by a Cease and Desist. The staff biologist reported that the project appeared to be in direct conflict with the RICRMP and that restoration of the area would be very difficult.¹²⁶ The Council approved this project on April 14, 1981. The barn and landscaping are pending as of May, 1981. The other addition was substantially completed by

TABLE 12
PROJECTS ON BARRIER BEACHS BEFORE
CRMC FOR FULL 30-DAY NOTICE
DECEMBER 1979 TO APRIL 1981

<u>NAME</u>	<u>FILE</u>	<u>BARRIER BEACH/TOWN</u>	<u>PROJECT TYPE</u>
Andrewchow	80-2-6	Central Beach/Charlestown	SFDU Rehab.
Vigra	80-2-7	" "	"
Simon	80-2-8	" "	"
Howard	79-9-5	" "	"
Bowman	80-7-22	" "	"
Angel	80-9-15	" "	"
Lynch ¹	80-9-19	" "	"
Callahan ¹	81-2-13	" "	"
Vars/Duckworth ²	79-6-17		
	80-11-6	" "	SFDU/ISDS
Wilbur	80-6-12	" "	"
Pouliot	80-12-23	East Beach/Charlestown	SFDU/ISDS
Fullam ³	80-9-22	" "	"
Pellam	80-7-24	Charlestown Beach/Charlestown	SFDU/ISDS
Cranshaw/ Fischer	80-3-23	" "	"
Vaclavik	80-1-10	" "	"
Montaquila ³	79-7-7	" "	"
Border Hill Mobil Home	79-7-13	" "	"
Lorenzo & Kelly	79-10-3	" "	"
Galilee Beach Co. ³	80-7-19	Sand Hill Cove Beach/Narragans.	Sign on beach

TABLE 12 (Con't)

<u>NAME</u>	<u>FILE</u>	<u>BARRIER BEACH/TOWN</u>	<u>PROJECT TYPE</u>
Darelius ³	80-8-6	Sand Hill Cove Beach/Narragansett	Sign on Bea.
Bates	79-10-15	Jerusalem Beach/Narragansett	Raise SFDU
Carter	79-7-16	Coast Guard Beach/N. Shoreham	SFDU/ISDS
Devereux	79-9-17	"	"
Devereux	79-9-12	"	"
Sorenson	80-10-20	"	SFDU Addit.
Conant ^I	81-1-1	Coast Guard Beach/Narragansett	SFDU/Addit.
B.I. Corporation ^I	81-2-1	"	Barn
Conant & B.I. Corporation ^I	81-3-1	"	Landscape
Gasner	80-10-17	Crescent Beach/N. Shoreham	Garden Shop
Gasner & Dowling ^I	80-11-2	"	Green House & Boat repair shop
Gasner ^I	79-9-3	"	SFDU & Sewer Connect.
Falvey	80-6-17	Atlantic Beach/Westerly	SFDU/ISDS
Urso	80-7-23	" "	"
Dubois ^I	80-7-1	" "	"
Crandall	81-2-9	" "	"

NOTES: These cases represent approximately 10 percent of the CRMC case-load. Unless otherwise noted, cases received an assent.

- NOTES: (1) No decision as of date of table preparation
 (2) Vars approved/Duckworth withdrawn by applicant to construct dwelling in conformance with assent received by Vars.
 (3) Denied

PREPARATION DATE: April 7, 1981

July, 1980, without an Assent from the state, although a local
127
building permit had been issued.

3. Areas for Preservation and Restoration: Case Study of the Pettaquamscutt River Programmatic Failure.

The Pettaquamscutt, or Narrow River, has been identified by OCZM as an area where water quality may be deteriorating and it is one of three "significant problems which the state must work
128
to resolve." The River is classified by the RICRMP as an area for Preservation and Restoration. Its water is designated for multiple use recreation. The CRMC acknowledged the need for problem resolution in the watershed, when on June 26, 1980, the Council formed a subcommittee on the Narrow River Watershed, that "by coordinating the information available in this area and acting as a catalyst between the towns, state agencies and concerned citizens, can possibly provide the necessary legislative authority to correct existing conditions on the watershed."¹²⁹ The Council prides itself on its role as a catalyst.

The Pettaquamscutt River watershed makes for a particularly interesting case study because it demonstrates amply the effect of the CRMC's approach to resource management, and the limited ability of the Council to affect landside activity because of the predominant role retained by local government. It is a significant resource which is affected by negative attitudes, three of which have been
130
identified in a draft interoffice memo to the Council. The draft, prepared in June, 1980, has never been discussed by the Council at its regular forums.

The most negative expression seems to be along the line that nothing can be done about the river and the watershed because the damage has already been done, and the fate of the resources was sealed by past development and zoning. A second negative attitude which argued against action to govern the watershed differently from current practice, is best expressed by the assumption that the river has always been the way it is now. That is to say that the fears of the preservationists and their supporters are substantially unfounded. The third most commonly held position appears to evolve out of the inherent contradiction expressed in the first two diametrically opposed beliefs. That is, what can we do?¹³¹

The RICRMP has established in Section 110.0-2D2 special consideration for multiple use recreation estuaries, such as the Pettaquamscutt River. It permits industrial development, deposition of fill, discharge of domestic, municipal and industrial sewage, extensive grading or excavation, storage or transport of hazardous materials, and any activity disruptive or recreational use "only upon demonstration that a bona fide benefit to the public welfare will result and, further, that no reasonable alternative exists."¹³²

Section 310.0-2A of the RICRMP defines sewage broadly and declares that:

Because runoff may include substances which may be injurious to public health or to animal and/or plant life, for the purposes of the Coastal Resources Management Program, 'sewage' shall be further defined as including silt and other particulates introduced into, and/or artificial increases or decreases above or below ambient freshwater inflow into tidal and intertidal waters, coastal ponds, and coastal wetlands.¹³³

It is also defined to include "every substance which could injuriously affect the natural and healthy propagation, growth or development of any animal and/or plant life in the water of the state, or the nourishment of the same."¹³⁴ Logically, this language carries with it restrictions on the permitting of stormwater outfalls in the Pettaquamscutt River, because stormwater runoff typically contains hydrocarbons, chemical fertilizers, chemical pesticides and herbicides, and coliform bacteria.

The issue of outfalls in the river was apparent in May, 1976, when the town of South Kingstown sought approval to install a storm drain outfall into the river. The project proposal received significant comment regarding its potential impacts from the Statewide Planning Program, which were evidently ignored.¹³⁵ There were also comments and recommendations from the staff Fish and Wildlife Biologist, which were similarly ignored according to the information on file.¹³⁶ This phenomenon has been an historical characteristic of the Program (Table 14, Table 15). Since 1976, the CRMC has issued approvals for four additional outfalls. One of them in 1979 received similar comments expressing similar concerns as in 1976.¹³⁷

There have also been two approvals for the installation of the Narragansett Town sewer system servicing the Bonnet Point area in the coastal drainage basin and a portion of the eastern section of the Pettaquamscutt Watershed. The RICRMP, Section 310.0-2C2, requires the demonstration "by reliable and probative evidence that

coastal resources are capable of supporting the proposed activity including the potential impacts and/or effects resulting from... cumulative impacts...changes to contiguous land use...secondary impacts resulting from additional development stimulated by new public facilities and the need and demand for the proposed action.¹³⁸ One of these projects was a 16" force main and the record indicates that the staff recommended the implementation of short-term site impact mitigation procedures and noted that the only way the CRMC could influence the impact of the anticipated development spinning off the sewer project would be on a case-by-case basis unless the Council chose to do otherwise.¹³⁹ The decision to install the sewers was a local one made years ago and the Council indicated no desire to pick up the reins in 1980.

Reliance on only site impact mitigation procedures has proven chancy at best, as in the case of the pumping station in the Bonnet Point region. It was stated on the record that: "A field check of the project site on July 17, 1980, revealed work was proceeding in violation of the Cease and Desist Order and that sediment laden water was being discharged directly into Wesquage Pond (an Area for Preservation and Restoration and a Conservation Low Intensity Use Coastal Pond where such discharges are strictly prohibited). This unauthorized work was granted CRMC approval on July 22, 1980, with the stipulations of the biologist's report dated July 17, 1980."¹⁴⁰

Seavey in 1975 reported in Marine Technical Paper No. 141 that the Narrow River (Pettaquamscutt) contains a wide variety of aquatic organisms. He stated that the River "may be one of the most vulner-

of Rhode Island estuaries. Since it extends in a long, narrow band for nearly six miles, and is bordered by a steep and largely nonporous watershed on both sides, the potential is high for contaminated runoff, leachate, and other pollutants to enter the river system." Seavey recommended that no additional pipes from any source be permitted to discharge into the river and that there should be "a program to dispose of sewage and effluent outside of the immediate watershed" for future extensive development. The following year, the Plan for the Narrow River Watershed supported Seavey's conclusions. "The discharge of runoff from stormwater drainage systems directly into tidal wetlands...that have been allowed in the past will, if continued over time, result in the environmental loss of an invaluable estuarine resource."¹⁴² The plan noted that "observations by residents indicate that the quality of the water is decreasing."¹⁴³ No concrete data is provided in this discussion in the plan, but septic systems discharging through storm drains and into groundwater, urban runoff carrying automotive wastes, nutrients, sediments, organic wastes, and fecal bacteria, and sediment discharge from cleared upland areas were all cited as factors that can and may be adversely impacting the estuary's water quality.¹⁴⁴ Additional studies and reports on the River's Water Quality have supported the hypothesis that the water quality is being adversely impacted by development. Notably, a report prepared by Sieburth, Water Quality of the Narrow River, 1959-1979, which presents data on "high counts" of coliform and argues that "Narrow River is significantly polluted during the summer months."¹⁴⁵ In 1980, a survey of sections of the Narrow River Watershed by RIPE, Inc. (Rhode Island Projects of the Environment),

reported finding dwellings within 350 feet of the river that were discharging greywater onto lawns, older systems suspected of being constructed of metal, and alledged sewage tie-ins with storm drains.¹⁴⁶

In 1979, the River was temporarily closed to shellfishing because of the high coliform readings reported by Sieburth. However, in September, 1979, a shoreline survey and shore sampling of the River by DEM, Division of Water Resources, reported coliform data that contradicted Sieburth's findings, and concluded that "unless more information is provided to the contrary, these do not appear enough evidence to warrant continued emergency closure of this area to shellfishing."¹⁴⁷

Slightly more than one year later, it was reported by the DEM Division of Water Resources, in a statement to the Narragansett Times, that the past summer's low pollution levels "coincide with the lack of rainfall in the area...(and) that the major problem in this area is runoff related."¹⁴⁸

Since 1979, there have been requests from the town of South Kingstown and the Federated Rhode Island Sportsmen's Club, Inc., urging the CRMC to not approve any further requests for assents along the Narrow River and coastal ponds because of water quality problems in those waterbodies.¹⁴⁹

Similar concerns have been expressed by the Narragansett Conservation Commission and the Mattatuxet Improvement Association, al-

though the Mettatumet group apparently has not taken as strong a position as others.¹⁵⁰ The "Moratorium" concept has been cited by the Statewide Planning Program.¹⁵¹ The Federated Rhode Island Sportsmen's Club, Inc., has also argued that "new septic systems should have a minimum setback of 300' from the river."¹⁵²

The Narrow River Watershed Plan presented a number of cogent arguments for breaking from past development trends in the watershed. Some of these are:

- Without adequate control of watershed development, aesthetic distinction and diversity and the scenic, recreational, and community benefits deriving from them risk being destroyed.¹⁵³
- If clustered housing or a similar pattern is not encouraged as an alternative type of development within the watershed, the opportunity to preserve natural aesthetic resources and to enhance the aesthetic quality of community life may be lost.¹⁵⁴
- Within the watershed, a pattern of severe and moderate limitations for community development based on soil and slope characteristics emerges.
- Possibility of residential development in these areas poses potential problems in terms of individual development costs, public service provision costs, and other environmental costs.¹⁵⁵
- Flood Hazards along the Narrow River may be sufficient to cause considerable damage...The existing on-site septic system along the river will washout...The continued development of the flood

plain will ultimately result in public as well as private costs.¹⁵⁶

- The land ownership pattern has the potential for conservation through individual owner initiative and large-scale development.¹⁵⁷

- Extension of public sewer service to the middle river communities will ameliorate the reported problems of septic system pollution (but) the availability of service will make higher densities possible (and) may result in additional urban runoff or sedimentation problems.¹⁵⁸

- Existing land use controls to both concentrate community development in appropriate areas—in terms of physical suitability and service levels—and to minimize development in inappropriate areas are weak.¹⁵⁹

The Narrow River Preservation Association (NRPA) has argued in favor of the CRMC being more actively involved in the management of the River and its watershed. The Association wrote in February, 1980, requesting the CRMC "change (its) policy for the future in such a way as to allow (the CRMC) to consider a development as a whole," rather than process applications individually.¹⁶⁰ Since then, no subdivisions in the watershed have been reviewed by the Council (Table I3). The issue is much larger than simple reviewing development as a whole; and while this issue has been addressed to the Council prior to the NRPA's request in 1980, notably in January of

that year during the discussion of a proposal for a single-family dwelling with ISDS in the Upper River Watershed,¹⁶¹ and elsewhere in the state's coastal region,¹⁶² it is ancillary to the main issues of how much authority the CRMC has to regulate land use. It is also secondary to how willing the Council is to exercise its authorities in a manner other than on a case-by-case basis.

TABLE 13

PETTAQUAMSCUTT RIVER DEVELOPMENT PROPOSALS SINCE 1977

<u>DATE</u>	<u>TOWN</u>	<u>APPLICATION NO.</u>	<u>APPLICANT</u>	<u>DESCRIP- TION</u>	<u>STATUS</u>
2/22/77	Narragansett	77-2-4	Town of Narragansett	Storm Drain Outfall	Assent
2/22/77	Narragansett	77-2-5	Town of Narragansett	Storm Drain Outfall	Assent
2/22/77	Narragansett	77-2-6	Town of Narragansett	Storm Drain Outfall	Assent
11/09/77	Narragansett	77-11-5	J. Fortes	D.U./ISDS Ret. Wall	Assent
7/03/78	Narragansett	78-6-11	S.J. Lindberg	D.U./ISDS	Assent
7/17/78	Narragansett	78-7-4	Estate of L.J. Tartoria	D.U./ISDS	Pending
11/02/78	Narragansett	78-11-2	E. Rex Coman	D.U./ISDS	Discharged
11/14/78	Narragansett	78-9-6 (resub- mitted as 79-11-18)	S.J. Lindberg	D.U./ISDS	Withdrawn
11/14/78	Narragansett	78-10-11	A. Diana	Remove silt fill; re- place w/ gravel	Discharged
2/08/79	So. Kingstown	79-2-8	J. Hafler	D.U./ISDS	Assent
2/08/79 1/13/81	Narragansett	79-2-2 80-11-5	G. Vare/ Botvin	D.U./ISDS	Assent
2/08/79	Narragansett	79-2-1	G. Vare	D.U./ISDS	Denied
2/12/79	So. Kingstown	79-2-11	C. Tanguay	D.U. add	Assent
4/26/79	So. Kingstown	79-4-21	C. Sharpe	Garage: Apt. & ISDS	Assent

TABLE 13 (Con't)

5/02/79	Narragansett	79-5-1	E. Blinkhorn	D.U./ISDS & Float	Assent
7/10/79	So. Kingstown	79-7-21	Terre Mar Realty	D.U./ISDS	Assent
8/28/79	So. Kingstown	79-8-14	Jay Ready- hough	D.U./ISDS	Assent
8/28/79	Narragansett	79-8-15	Town of Narr.	Storm Drain Outfall	Assent
9/04/79	So. Kingstown	79-08-18	Harry Ready- hough	D.U./ISDS D.U./ISDS	Assent
12/06/79	Narragansett	79-11-18	S. J. Lind- berg	D.U./ISDS	Withdrawn
9/28/79	Narragansett	79-09-33	W.J. Shea	D.U./ISDS	Assent
8/27/79	No. Kingstown	79-9-1	E. Grove	D.U./ISDS	Assent
1/04/80	No. Kingstown	80-1-4	W. Brock	D.U./ISDS Sewer	Assent
2/04/80	Narragansett	80-01-19	Town	Pumping Station	Assent
3/11/80	Narragansett	80-3-7	A. Canyon	SFDU/ISDS	Assent
3/26/80	Narragansett	80-3-18	RIDOT	Bridge	Assent
4/07/80	So. Kingstown	80-3-26	L.D. Kortick	Floats	Assent
4/18/80	Narragansett	80-4-8	Sullivan & Carciari	SFDU/ISDS	Assent
12/31/80	Narragansett	80-12-24	Kenyon	SFDU/ISDS (5)	Assent
12/01/80	Narragansett	80-12-3	S. Lindberg	SFDU/ISDS	Withdrawn
10/28/80	Narragansett	80-9-13	Town	16" Force Main	Assent
1/28/81	Narragansett	81-1-10	Ervine Es- tates	SFDU/ISDS	Pending
3/09/81	Narragansett	81-3-2	JLK, Inc.	SFDU/ISDS	Pending

Preparation Date: 4/29/81

TABLE 14

1977 Cases with Major Comment/Objection from Statewide Planning Program

0	Border Hill Mobile Home	76-12-9	SFPU/ISDS on BB	Charlestown
0	Cross, Andre (withdrawn)	76-8-05	SFPU/ISDS on BB	Charlestown
MC	D'Antonio, Renato	76-5-2	SFPU Addition on BB	South Kingstown
MC	DeGuilio, Vincent	77-5-15	SFPU/ISDS Relocate	Charlestown
MC	Fortes, Jose	77-11-5	SFPU/ISDS Flood Elevations	Narragansett
MC	Frishman, Camille	77-6-4	SFPU/ISDS	Westerly
0	Kroha, John	76-9-13	SFPU/ISDS on BB	Charlestown
0	Kroha, John	76-9-12	SFPU/ISDS on BB	Charlestown
0	Murray, John	77-5-12	SFPU/ISDS on BB	Charlestown
0	Murray, John	77-6-10	SFPU/ISDS on BB	Charlestown
0	Nasse, Vincent	77-10-1	Maintain illegal fill in Marsh	Narragansett
MC	Orzech, Walter	77-5-16	SFPU/ISDS Relocate on BB	Charlestown
0	Plecity, John	76-8-6	SFPU/ISDS on BB	Charlestown
MC	Smith, Andrew	77-8-7	SFPU/ISDS	Charlestown
MC	South Kingstown	76-3-15	Outfall on Narrow River	South Kingstown

TABLE 14 (Con't)

MC	Westerly Town	E-77- 4-14-4	Grading a Barrier Beach	Westerly
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SEE KEY AND NOTES FOLLOWING TABLE 15.

TABLE 15

1977 Cases with Major Biological and/or Engineering Comment/Objection

MC	Ferraira, Robert*	77-3-4	SFDU/ISDS on BB	Westerly
MC	Ferretti, Margaret*	77-6-11-11	SFDU/ISDS on BB	Charlestown
MC	Freisi, F.*	76-7-13	Pier, Ramp, Floats	Warwick
MC	Frishman, Camille	77-6-4	SFDU/ISDS	Westerly
O	Lisar, Richard*	77-9-8	Rip Rap Wall	Narragansett
MC	McGraw, William*	77-8-13	Rip Rap Wall	Jamestown
MC	Mello, Jesse & Robert	77-10-7 77-10-8	SFDU/ISDS on Marsh	Little Compton
MC	Mello, Jacenthos*	77-10-9	Rip Rap Weekapaug Breachway	Westerly
O	Murray, John	77-6-10	SFDU/ISDS on BB	Charlestown
MC	Narragansett Town*	77-9-1	Outfall Near Public Beach	Narragansett
MC	Nassa, Vincent	77-10-1	Maintain illegal fill on Marsh	Narragansett
MC	Oxx, Gordon*	77-8-11	Rip Rap Wall	Jamestown
MC	Plecity, John	76-8-6	SFDU/ISDS on BB	Charlestown
MC	Restelli, Edith*	77-9-10	Rip Rap Wall	Westerly
MC	Saunders town Y.C.*	77-7-7	Rip Rap Wall	North Kingstown--Narr. Bay

TABLE 15 (Con't)

MC	South Kingstown Town	76-3-15	Outfall on Narrow River	South Kingstown
MC	Westerly Town	E-77-4-14-4	Grading on Barrier Beaches	Westerly
MC	White, Edward	77-8-10	Rip Rap Wall	Jamestown

KEY AND NOTES TO TABLES 14 AND 15

KEY: O - Objection and/or recommendation for denial.
MC - Major substantive comment.
* - Cases with major substantive comment or objection and/or recommendation for denial by Staff Biologists/Engineers, but with no Statewide Planning Comment on file.
BB - Barrier Beach

The Statewide Planning Program offered major or substantive recommendations for denial or requested the applicants to be required to meet their burdens of proof on 13.3 percent of all cases in the 1977 sample. These types of comments, 16 in all, were particularly directed to construction on barrier beaches. They comprised a quarter of all comments received by the CRMC from Statewide Planning, and the evidence in the file indicates the comments were ignored. This occurred even in those cases where the planning agency suggested that environmental case law in other states may be of benefit to the CRMC if it desired to deny the application, but feared the taking issue. In 18 cases, there were major substantive comments or recommendations for denial from the Department of Environmental Management Biologists and/or Engineers based on potential and actual adverse impacts, the need for better plans, the need for impact evaluation, damage to sand dunes or saltmarsh or because of fill below mean high water, or because the proposal was outright ineffective. There were some overlaps in these 18 cases with the 16 Statewide Planning cases. Again, the evidence on file does not favor the argument that the CRMC seriously considered technical advice (see Section E). The large majority of the Assents issued for projects did not have stipulations (development standards) attached to mitigate site impacts. Although there are a couple of exceptions where the CRMC required that the biologists stake the limits of a marsh (Cappuccio, 79-3-1) or the engineers relocate a structure to minimize adverse impacts (Plecity, 76-8-6). Many cases have files with no staff reports or only a scant amount of information from any staff, indicating that the decisions were made much more on the basis of Council member's perceptions or desires.

The files contain ample evidence that the practice of "legalizing" projects that were started and/or completed without an assent, was well established in 1977 (Nassa 77-10-1, Saunderstown Yacht Club 77-7-7, Pucci, 76-5-16, to mention a few). One approval occurred with a Water Quality Certification denial attached to it. This is a violation of the CRMC statute. The area apparently was reclassified from Class SA (highest) to SB (second highest) at a later date to allow the CRMC permitted activity (Salt Pond Marine Railway 76-6-5).

The New England Telephone overseas underwater cable case (77-3-12) which was frequently referred to OCZM as an example of how the permitting process created beneficial modifications, has no reports on file to explain what was done or why. Of the 120 cases that reached a decision, only Mello and Mello (77-10-7 and 77-10-8) for a single-family dwelling and individual sewage disposal system in a marsh area, constructed without a CRMC permit, were effectively denied. This occurred in 1980 when the cases were discharged with prejudice by the Council, and the legal staff was instructed to proceed with civil and criminal actions. These cases required 31 months to reach that point, and the structures had not been removed as of the end of 1980.

At least one case (Fortes, 77-11-5) typifies the local disregard for flood plain management and building code regulations where the applicant constructed a single-family dwelling with its lowest habitable floor well below the 14-foot mean sea level base flood elevation. It was cases such as this, discovered through field spot checks by the Statewide Planning Program, the state's Flood Insurance Coordinating Agency, that led to the CRMC stipulating flood elevation requirements on all assents. Some CRMC members and some of the "old hand" staff three years later continue to resent being backed into enforcing someone else's program and regulations. (It was also suggested by local residents to the author, during one field visit, that local building inspectors who disregard the flood plain elevation should be investigated for real estate conflicts of interest.)

One case (Highfill, 77-2-1) was reported by staff, based on a site visit, to be beyond the CRMC's jurisdiction, yet the person was still required to get Council approval. There is no evidence in the file suggesting the reason why this apparent illegal exercise of authority occurred.

H. Reflections on the NRDC Report on the Rhode Island Coastal Program, 1976.

The Rhode Island Program was first submitted to OCZM in June, 1976, for approval. As a necessary part of the approval process, a public hearing was held on July 26, at the State House. A consortium of environmental groups led by the Natural Resources Defense Council, Inc., a nonprofit national organization, concluded that the CRMC did not have the proper authorities, powers, nor administrative operation to warrant approval by OCZM. Moreover, it concluded that the program itself did not fulfill OCZM's mandate for definitions of permissible uses, designation of areas of particular concern and areas for preservation and restoration, and had not set guidelines for the priority of uses in the Rhode Island Coastal Zone.¹⁶³

The evaluation stated that "The Council cannot effectively control all activities having a significant impact on the coastal zone."¹⁶⁴ The Council's regulations in 1976 were described as "too vague to resolve conflicts among conflicting uses."¹⁶⁵ The Administration of the program did "not comply with the (Federal CZMA) requirements."¹⁶⁶ The boundaries were not clearly defined and there was "too much discretion (placed in) the Council."¹⁶⁷ There was a failure to facilitate "the assessment of cumulative impacts," and the program's impact approach was described as "unfair to developers."¹⁶⁸

It was the consortium's conclusion that the NRDC's Model Coastal Zone Statute should be utilized by Rhode Island, and the central feature of that model was a zoning plan,¹⁶⁹ which included "a land

capability and land use element for the integrated arrangement and general location and extent of and the criteria and standards for, the use of land, water, air, space, and open natural resources..."¹⁷⁰ This type of an approach for land and water uses has been consistently rejected by the CRMC and Coastal Resources Center personnel based on the argument for flexibility in decision-making

The NRDC emphasized the need for "independent staff reports on the record with detailed findings."¹⁷¹ Their analysis also supported the concept of making the full staff report available to interested parties for review before the full Council acted on the case, and proposed that written findings by state agencies be placed on the record at the time of the staff report. Except for contested cases, this procedure is now in place. All documents pertaining to a particular case are published in an agenda format the Thursday prior to the Council's meeting on every second and fourth Tuesday of the month. Although deviations from this practice are not uncommon as cases are placed on the agenda at the last minute.

There was a suggestion that local plans and ordinances be reviewed for a lack of consistency with the state program and that the CRMC "adopt a specific" program for bringing local plans and controls in compliance" with the state Plan.¹⁷² It was also recommended that¹⁷³ Technical assistance be provided to local communities. The review of the local plans has occurred, although no attempt has been made to achieve compliance. Technical assistance has been limited to isolated problems.

Reflecting back on the concept of a zoning plan, the critique flatly stated that the CRMC "must be authorized to deal with all activities...all areas...and all kinds of impacts of activities in the coastal zone."¹⁷⁴ NRDC pointed out that the Rhode Island Program had been found deficient by NOAA sponsored studies, in its ability to control these activities, areas and impacts. Bradley and Armstrong stated that the Rhode Island Coastal Resources Management statute "by restricting its coverage to specific activities...does not provide any mechanisms to control the proliferations of subdivision developments, private homes, and industrial plants other than petroleum and chemical facilities. The act will have to be amended to include such activities before it can be considered to provide a complete program for coastal zone management."¹⁷⁵ Their analysis was essentially correct. The act was not amended.

The NRDC approach was really a land management scheme that the CRMC simply did not and does not have the authority to implement. Land management legislation in Rhode Island is necessary if concepts such as those expressed by NRDC are to become reality. There was pressure on Rhode Island's Coastal personnel to go to the legislature to obtain the necessary authorities, but the CRMC resisted, because the tenor of the time in the state had shifted from environmentalism to economic development.

The Program's inability to acquire land, through a statutory deficiency, was viewed as a hindrance because "such a power is necessary to implement the recommendations emerging out its studies." Cited

here by NRDC was the Council's barrier beach studies which noted that this lack of authority "will seriously undermine any report to manage land areas under the Council's jurisdiction." ¹⁷⁶ This view was more strenuously emphasized "due to the unsettled nature of the 'taking' question in Rhode Island." ¹⁷⁷ NRDC attributed the Council's "soft" position, as evidenced through a lack of denials, on the "taking" issue and argued that the CRMC's fear of the taking issue stems from the Council's lack of eminent domain power." ¹⁷⁸ The Chairman's response to this observation is that one does not measure the success of a school by the number of students that flunk out.

The power of eminent domain was included in the original legislation drafted by the first Technical Committee, but was struck on the insistence of local governments. The lack of this power ostensibly has been the cause of the assents issued on Coast Guard Barrier Beach for single-family dwellings with ISDS.

The critique found particular fault with the Council's impact assessment procedure as described in the 1976 management program. That approach, described in Appendix A of the 1976 management program, involved the staff preparing an evaluation of each proposal before the Council based on an ecosystem evaluation. The site specific characteristics would be compared to the proposed uses and activities and the potential impacts would be assessed. The staff report would recommend denial, approval or modification. This is not different from the present procedure, except that the Council objects to the staff making recommendations to approve or deny. NRDC objected strenuously

to this approach. They wrote:

It is our contention that the use of this impact approach, without (emphasis added) a set of comprehensive and specific regulations to guide the assessment of the impact, violates the letter and the intent of the Coastal Zone Management Act. This impact approach seeks to turn this Act into a completely different law similar to the National Environmental Policy Act. The impact approach vests too much uncontrolled discretion in the Coastal Resources Management Council. The approach makes the assessment of cumulative impacts difficult, if not impossible. The impact approach is unfair to prospective developers, because it gives them no guidance through present regulations. The impact approach results in decision-making with low public visibility, making citizen participation difficult, if not impossible.¹⁷⁹

It is important to realize that NRDC did not say that the evaluation matrix was not good and should not be used. What was said was that it could not be used alone, without more specificity in the program. NRDC referred to the federal regulations, Section 923.12, to buttress its argument for the preparation of a "mapping of areas with a system of permissible uses,"¹⁸⁰ to provide this needed specificity.

The issue of "too much uncontrolled discretion" residing with the CRMC was not at all unfounded. The Rhode Island Superior Court in the Spring, 1981, remanded a case back to the CRMC to take more evidence on the central issue of the case. The court concluded that "The Council abused its discretion by denying approval without fully addressing the (central) question" that significant damage to a wetland would occur.¹⁸¹ The Court also found that there was a lack of evidence to support the conclusion that the proposal conflicted with Section 120.0-2(D)(4) of the RICRMP, because "a reading of this section fails to disclose what the Council's "plan" for coastal wetlands is, as

basically all this section does is shift the burden onto the applicant to show that a proposal will not significantly damage the coastal environment.¹⁸² The Court also ruled that "Speculation concerning possible future uses of the land, such as for a dwelling unit is improper...(and that) the Council's attention to these matters is precisely why the legislature has created it and empowered it to Act."¹⁸³ This is technically correct, but without a plan, one can only resort to speculation. And, realistically, once a project "gets a foot-in-the-door," the precise lack of a plan makes further attempts to regulate development extraordinarily difficult, time-consuming and costly.

Lawyers and developers who must deal with the present management process have expressed their personal exasperation with the total lack of a solid program to guide them. What the program presently says, in an unwritten fashion, is you can apply for whatever, wherever you like, regardless of what the RICRMP says, and we will judge your case on its merits. This is precisely what OCZM and NRDC sought to put an end to because it creates an atmosphere of havoc, leaves the CRMC with too much discretion and really is not resource management. It is precisely the need for more specificity that is the focus of internal debate and the target, hopefully, of a major revision of the RICRMP.

NRDC looked dimly on the case-by-case approach to resource management, because "when an application is made, the focus of investigation necessarily becomes site specific."¹⁸⁴ It was the environmental group's contention that the Rhode Island and federal coastal laws required an assessment of cumulative impacts.¹⁸⁵ (See Chapter 3, Section G.3, Discussion of the Pettaquamscutt River.)

Writing four years later in the Journal of the American Planning Association, Sara Chasis lamented the lack of coastal states that provide for the assessment of cumulative impacts. She cites OCZM's response to NRDC's 1976 comments, that development of explicit cumulative impact criteria was not a requirement of the CZMA. This¹⁸⁶ opinion was also offered by OCZM on the Massachusetts Program. The RICRMP does require the evaluation of cumulative effects in some situations (i.e. Section 310.0-2C2).

Brooks, and his researchers, saw that the 1976 management program offered "no prospective developer...a clear idea of whether he can or cannot proceed with his development. Every development, major or minor, must run the gauntlet of the impact assessment approach."¹⁸⁷ This was viewed as being administratively infeasible, and not a viable method of resolving use conflict.¹⁸⁸ They foretold that the approach encourages conflict and litigation.¹⁸⁹ Further, "The public hearing as a specific application device does not appear to effectively promote citizen participation."¹⁹⁰ And, the substantive language of the 1976 program was not left unscathed. For instance, the language governing the construction or alteration of sand dunes was described as¹⁹¹ "vague."

It is curious that NRDC chose this section of the 1976 program as an example. The language in Section I20.0-2-DIC is now less vague. In fact, it is very restrictive, but it did not prevent the Council from issuing assents for single-family dwellings with ISDS on Coast Guard Barrier Beach, on the dune; an exercise of discretion.

The Administration of the Coastal Resources Management Program came under close scrutiny as well. Reports by the University of Rhode Island Coastal Resources Center describing staff problems and a backlog of applications were cited as sources describing "a serious bottleneck in the handling process."¹⁹² These reports were dismissed by the Division of Coastal Resources Chief who reportedly claimed that the backlog was no longer true and that the fulltime investigators were more than able to handle the workload,¹⁹³ although there was admittedly a backlog in the site monitoring process.

The picture painted of reality itself in the realm of permit processing, backlogs, staffing, and the like, have constantly placed the state's program administrators in a defensive position, a position where they must always try to make data that someone else prepared look good to themselves and the public. This phenomenon is discussed in Chapter 3. A more recent example of the "administrative response" refers specifically to Grant's 1980 program procedural review: "It is hard to give specific percentage on how much of the report has been incorporated into the handling process. It is apparent that the application and permit process presently is much faster, accurate, and efficient than before the report."¹⁹⁴

NRDC reported that the record keeping system of the Division of Coastal Resources was incomplete and disorganized, a characteristic which "makes public accountability impossible."¹⁹⁵ The record keeping system has been the target of repeated evaluation. There was an effort to computerize the permit record keeping system. The report filed by OCZM's Management System Consultant on the Rhode Island permit information system states that: "The most striking impression re-

ceived by the author in studying the Rhode Island permit information system is that the automated system does not appear to be very useful..."¹⁹⁶ An internally generated report at the Division of Coastal Resources analyzed the entire record keeping system and presented a set of recommendations. Prepared during the summer of 1980, the report has never been released.

NRDC reported that only a few applications go out to public hearing, and as such, a channel of communication between the public and the CRMC was underused. However, it was noted that the "lack of public hearings may be due to the larger number of applications having small impact in themselves."¹⁹⁷

The conclusion of this research is that there are far too many public hearings, a conclusion based on the information gathered and the validity of the objections that trigger the hearing. These findings are not incompatible with the NRDC contention that public hearings are a valuable means of communication with the Council, and in some instances, they have proved to be so, but only when a case is for a proposal that is not in some way routine such as the designation of a sanctuary for SCUBA divers off Fort Wetherill, Jamestown, or for a direct discharge of a chemical solution into the Seekonk River by a chemical company.

It was noted by the NRDC researchers that only a small number of applications were denied.¹⁹⁸ The explanation offered by CRMC at that time was that the permitting process is a bargaining process in which applications are improved to a point of acceptability.¹⁹⁹

NRDC contended that the alternate hypothesis would be that the Council has a strong development bias and therefore approves applications without proper consideration of the environmental effect. However, to prove this (or disprove it), a large sample of assents was suggested as necessary to determine if any of them had damaged the coastal zone. If such a conclusion could be verified, it would lend support to the finding by NRDC that "Despite the management program applications appeal to all sorts of scientific information, the reality of decision-making on the Council's part in the past often does not reflect a serious concern for facts and scientific conclusions." It is one of the conclusions of this research that the second hypothesis offered by NRDC is true. This is not to say that some bargaining does not occur or that projects are not altered by such bargaining.

I. Assessment of the Effect of OCZM as a Policy Source on Program Development and Implementation.

The moving federal target affected the development of the Rhode Island program, although it is not certain to Program Personnel that this had a negative affect apart from the problems caused by vagueness. The state program was initially submitted to OCZM for approval in June, 1976. In August, the state program personnel met with top OCZM personnel in Washington, D.C., to learn that the management program as submitted was unacceptable. The initial written response to OCZM from the state was that "new personnel with new concepts" created vacillation at the federal level, and that the state was "expecting reliable direction, advice and cooperation from Washington."

The shifting target syndrome can be reasonably viewed as a product of the initial difficulties OCZM had encountered with the state of Washington's Coastal Management Program. Washington State had a programmatic approach, described by Grant in 1972, as similar to Rhode Island's,²⁰⁴ and it had been reported at the 1976 Airlie, Virginia, State Coastal Program Managers Conference that the Washington State Program, approved a year earlier, had killed all hopes for land management in that state because of the turmoil the Coastal Program had caused.²⁰⁵

Regardless of any implications of these tenuous comparisons between Washington State and Rhode Island, OCZM's response to Rhode Island's chagrin was an assurance of additional monies to continue the work necessary to refine the state's program. OCZM assured the state that a positive and detailed federal response to program development would occur, especially "with the changes and maturing in both the national and state programs" that were occurring.²⁰⁶

The drafters of the Rhode Island Program had placed heavy reliance along the way on the OCZM Threshold Papers.²⁰⁷ They also relied exclusively on the state's Coastal Resources Management Act of 1971 as the source of state authority. It is not unreasonable to assume that if problems had not occurred in Washington State and if the NRDC had not prepared its blistering critique of the Rhode Island Program in 1976, the state would have encountered little difficulty.²⁰⁸ However, the "maturity" referred to by Knecht in his September 14, 1976, letter to the state resulted in a much more guarded and careful examination of the 1976 Program. Their reac-

tion to the program "amply demonstrated that they were extremely uncomfortable with the amount of discretion the Council (CRMC) has retained for itself."²⁰⁹ Moreover, the 1976 program relied on only those policies and regulations which were in place, a fact viewed by OCZM as a weakness because they feared a challenge from NRDC on a program "whose substance is so openly and admittedly incomplete."²¹⁰ The solution was to "introduce more additional structure and predictability into the Council's internal deliberations."²¹¹

The Office of Coastal Zone Management did believe that it would be desirable for objectives and policies to reflect themselves in measurable standards, which the 1976 Rhode Island Program did not do. The state's position was that such measurable standards, were "not achievable on the basis of the preliminary resource assessment...(but that it) may prove desirable for us to expand further on our resource assessment with the objective of developing more specific and detailed statements or objectives."²¹² OCZM also was concerned how a person would know how or if the program applied to their specific situation. It was the state's position that an applicant knows whether his proposal is subject to controls and/or is permissible and that the RICRMP provides a minimum of ambiguity.²¹³

Between rejection in 1976 and acceptance in 1978, the state was able to adopt a significant number (15 out of a total of 21) of new policies and regulations covering many activities,²¹⁴ but the predictability of the Council's internal deliberations was not necessarily enhanced. The need for standards has been foremost in the minds of state personnel who are responsible for the day-to-day implementation

of the program, and it is clear from daily interactions with the public that applicants all too frequently learn of the Coastal Program at either the last minute or after they have started their project. This can be accepted as a measure of ambiguity, and it is documented in the Cease and Desist Orders.

Obviously a major concern of OCZM and a reason for the 1976 Program's failure to gain approval was the lack of specificity of the Program. OCZM wanted the CRMC to limit its discretion and a demonstration that "additional predictability in State OCZM decision-making (would) result from 306 approval." This included the Geographic Area of Particular Concern (GAPC's) and the Areas for Preservation and Restoration (APR's). How, specifically, were APR's going to be managed and/or protected? In the 1976 program, Rhode Island included ports, harbors, and urban waterfronts as Geographic Areas of Particular Concern, but they are not so designated in the current program. OCZM had believed that in 1976 too many areas of the state were captured by these designations, and the state was advised to "cut back" on these.²¹⁶ This has been to the state's detriment because it has limited the Program's ability to effect development in ports and harbors and has restricted these areas from the limited OCZM funding for GAPC's.

As a policy guidance mechanism during Section 306 implementation, OCZM's track record is not better than it was during program development. It may even be worse because OCZM made little effort to assure that the state program corrected identified deficiencies, whereas it at least made the effort, albeit largely at NRDC's behest, during pro-

gram development. Several examples are illustrative of this lack of influence on the Program by OCZM.

The June 6, 1978, OCZM Evaluation of the Rhode Island Program for the period January 1, 1979, to December 31, 1979, recommended the state program to improve its internal communications "to ensure that each permit application receives professional review to determine the probable impacts (of) the proposed activity."²¹⁷ A year later it was reported at the January, 1981, OCZM evaluation site visit a case exhibiting precisely the evils that the recommendation sought to re-
218
solve.

An applicant had received a Letter of No Objection to construct a single-family dwelling with ISDS. During the process of revising the ISDS plan, the applicant's proposal was evaluated through a joint coastal/ISDS review by coastal staff. The staff recommended that the project be put out to a 30-day Notice. The case came before the CRMC on October 28, 1980, with an incomplete file. This represented a deviation from procedure. The CRMC accepted testimony on the record from Council members, who are not expert biologists or engineers, that contradicted the professional staff findings.²¹⁹

Mr. Hicks: "How far is it from the water?"

Mr. Turco: "Four or five hundred feet. That used to be a saltmarsh 15 years ago and hasn't been a saltmarsh in the last seven or eight years that I know of."

Mr. Hicks: "Is there anything in the file that shows that

there may be a negative impact on the tidal waters?"

Mr. Lyons: "Not to my knowledge."

The project received an assent. The case is more interesting because the Chairman has written of observed and reported violations of the site impact mitigation stipulations including dwelling construction not in conformance with the flood hazard regulation of the State Building Code, and adverse impacts to the "large phragmites wetland," described by the staff biologist to be a salt and brackish marsh surrounding three sides of the property.²²⁰

The OCZM review also recommended that the CRMC "develop procedures for the timely and equitable disposition of violations of its regulations, permits and Cease and Desist Orders."²²¹ The problem of how to deal with violations has been an internal issue with the Council for some time. It is not resolved, and a review of the Council transcripts from July, 1979, through December, 1980, reveal a constant pattern of anxious moments for Council members.

—Murray, File 79-6-5 for an ISDS to replace a washed-out system on the beach along Block Island Sound.

Mr. Brown: "How are you going to enforce regulation if you are going to condone what people have been doing without assents?"²²²

—Sacco, File 79-2-7 structure on a beach, adjacent to a barrier beach.

Mr. Turco: "I think Senator Canulla objected to this originally because the applicant had taken action without an assent."²²³

—Coleman, File 79-8-5 a SFDU/ISDS on Rhode Island Sound.

Mrs. Colt: "...this particular applicant was told to stop his work until he had a proper application and went ahead and did the work anyway."²²⁴

—General discussion of Cease and Desist Orders on April 8, 1980.

Mr. Hicks: "If someone goes out and breaks the law, they should not be placed in an advantage...We are coddling the lawbreaker and making the person that does it right toe-the-line."²²⁵

—Carr, File 80-6-5 for an illegally installed rip rap wall on Point Judith Pond.

Ms. Brasail: "What's the consensus of this Council as far as Cease and Desist Orders are Concerned?"

Mrs. Colt: "They are useless."²²⁶

Against these expressions of exasperation and hopelessness, OCZM has written the State: The CRMC and the Division of Coastal Resources should reduce the time to process and issue notices of violation and Cease and Desist Orders in order to stop illegal activities at the earliest possible moment.²²⁷

And, in an instance where OCZM described the effectiveness of the CRMC as a protector of natural resources, the 1980 evaluation reported that "the CRMC has required buffer areas between proposed construction and wetland habitats as stipulations for CRMC assents. The buffer area is normally at least 50 feet wide, but may be as large as 100 feet, depending on the specific local conditions."²²⁸ The review of cases reported in Appendix I revealed mostly 50-foot buffer zones, with a range from 10 to 60 feet. There were no 100-foot buffers during the sample period. This type of reporting by OCZM creates a false impression of the implementation of the program, but precisely the type of impression that lends itself nicely to the Council's public relations efforts. It completely ignores the observed fact that once a project has started prior to receipt of an assent, any hope of preventing damage through the use of buffer zones is greatly reduced. The emplacement of a buffer after site work is started or completed negates its primary value of minimizing environmental damage during construction.

Sara Chasis of NRDC has concluded that because "no regulations have ever been issued under (Section 312 CZMA) nor have clear objective standards been set for judging a state's performance, determining whether or not a state is justified in deviating from its program. "The 312 evaluations seem largely to whitewash problems."²²⁹ It is her belief that OCZM's laxity will result in millions of dollars wasted and the coast will remain unprotected.²³⁰

J. Internal Perceptions of the CRMC's Mission 1972 V. 1981.

On January 29, 1981, the CRMC held a "group dynamics session" that involved personnel from the Department of Environmental Management Divisions of Coastal Resources, Fish and Wildlife, Enforcement, and Administration; the Statewide Planning Program; the University of Rhode Island, Coastal Resources Center; and members of the Coastal Resources Management Council. This professionally conducted all-day session was designed around a questionnaire aimed at eliciting personnel perceptions on programmatic goals, problems and solutions.

Six central issues were identified:²³¹ (1) There is a programmatic need to develop resources and area specific plans and implement site specific policies and regulations for critical coastal areas; (2) There must be better interagency coordination; (3) The permit processing system must be streamlined; (4) There needs to be greater attention to enforcement of the program; (5) There needs to be a consensus among CRMC members regarding the program they have adopted; and (6) The public education (information) effort needs to be refocused and emphasized to support program goals and enforcement. These issues are substantially the same as those identified at a similar workshop held by the CRMC on November 29, 1972, at the University of Rhode Island Faculty Center (Table 16).

When one studies the summary of problems facing the CRMC in 1972 and places them within a use and activity framework, one can discern little real difference between the two sets of issues; the set developed in 1972 and the one produced approximately 9 years later. It appears

TABLE 16

SUMMARY OF ISSUES RAISED AT BEGINNING OF CRMC'S WORKSHOP
Faculty Center - URI
November 29, 1972

A. USES AND ACTIVITIES OF COASTAL ZONE

residential and private	power plants
recreation and public access	waste disposal
boating and boating facilities	dredge spoils disposal
sport fishing	offshore resource exploitation
commercial fisheries	oil transfer
industry, commerce	governmental: local, state and federal

B. PROBLEMS FACING COASTAL ZONE MANAGEMENT

conflicts within uses and activities listed above
rights of ownership, use, condemnation, compensation and protection
multi-use shoreline
resource evaluation
shore and harborline definitions
capital improvements funding
public understanding and involvement
federal prerogatives

C. PROBLEMS FACING RHODE ISLAND CRMC

need staff, central coordination
funds for staff, research and management
set management priorities
administrative decision-making procedures
maximize communication within CRMC
maximize communication with other agencies and public
public education, brochures
interagency coordination/competition: federal, state, local
law clarification
legislation
enforcement
define jurisdictions and responsibilities
technical information for planning
zoning

that time stood still. An explanation for this lies in a report prepared for the Coastal Resources Center in November, 1972. Entitled "A Brief and Critical Look at Coastal Management on the State Level," the report summarized the effort of the various coastal states to develop coastal zone management programs.²³² Five states were identified as having no significant activity; Twelve states were described as utilizing a "matrix" management approach which emphasized detailed and systematic resource identification prior to the preparation of a management program; Four states were identified with the "matrix-moratorium hybrid," which sought to control short-term development while the master plan was created; Three states were credited with attempting a state-county regulatory approach in which the counties would be responsible for zoning permissible uses in accordance with state guidelines; and only two states, Rhode Island and Washington, were identified with the "organizational" approach which emphasized direct and immediate administrative action.²³³

The main characteristic of the organizational approach is the development of a functional management mechanism (i.e., CRMC) equipped to deal with pressing developmental problems, with its actions "guided by a general statement of management philosophy."²³⁴ The advantages to this approach were described as: (1) creation of the ability to deal directly with critical problems demanding an immediate management response; (2) gradual accumulation of financial and personnel resources; (3) creation of the appearance and reality of a responsive organization, thereby stimulating public support and discouraging "bureaucratic footdragging."²³⁵

The report was quick to point out, however, that the very things perceived as strengths could at once be the greatest weakness. That is, by creating an aura of urgency and crisis around many decisions, the approach encourages rash, ill-considered and ill-conceived responses; a tendency to overreact to whatever was perceived as an obvious threat while ignoring less dramatic but equally important responsibilities; and the system "may find itself bound into a 'brush fire' mentality."²³⁶ The organizational approach was seen as especially dangerous because it issued a management approach that would postpone forceful decisions on major policy issues, thereby effectively removing control of major developments from the management process, while bogging the system down in routine decisions handled on an ad hoc basis.²³⁷

The history of Rhode Island's Coastal Management process and the case load analysis certainly affects a reality that mirrors the most feared predicted outcome discussed by Grant in 1972.

FOOTNOTES: CHAPTER THREE

1. State of Rhode Island Coastal Resources Management Program:
March 14, 1978, (Providence, Rhode Island) Coastal Resources
Management Council, 1978), p. 284. Hereafter cited as RICRMP.
2. Ibid., p. iii.
3. Ibid., pp. ii, iii.
4. Ibid., p. 41.
5. General Laws of Rhode Island, Chapter 46, Section 23-6, Bd.
6. Ibid.
7. RICRMP, Summary DEIS.
8. Ibid., p. iii.
9. Ibid.
10. General Laws of Rhode Island, Chapter 46, Section 23-6B.
11. Ibid.
12. Ibid.
13. RICRMP, pp. 41, 42.
14. Ibid., p. 31.
15. Ibid., p. 32.
16. Ibid.
17. Ibid.
18. Ibid., p. 56.
19. Ibid., pp. 56-58.
20. Coastal Resources Center and Resources Management Systems, Inc.,
"The Coastal Resources Management Program: A Handbook for
Permit Applicants," (Kingston, RI: University of Rhode Is-
land, June, 1978).

21. Rhode Island Coastal Resources Management Council Application, Charron & Sons, Inc., File 80-6-9. See also State of Rhode Island and Providence Plantations Coastal Resources Management Council Regular Monthly Meeting (August 14, 1979, TRANSCRIPT, p. 21. Statement on the record: "there are no written objections. We consider if somebody writes a letter, other than the staff, we consider that written objection." (discussion on Kasdon, File 78-11-11, for a wall and rip rap along Rhode Island Sound, Newport).
22. RICRMP, p. iii.
23. Rhode Island Coastal Resources Management Council Application, Four twenty Corporation, File 79-12-5. See also CRMC meeting February 26, 1980, TRANSCRIPT, pp. 30-38.
24. RICRMP., p. iii.
25. General Laws of Rhode Island, Chapter 46, Section 23-6A.
26. Frank P. Garemba, Assistant Director for Operations, Rhode Island State Department of Environmental Management, Inter-Office memo regarding volume of paper, December, 1980.
27. RICRMP., p. iv.
28. Ibid., p. 275.
29. Ibid.
30. Division of Coastal Resources, Department of Environmental Management, Coastal Zone Management Annual Report for Fiscal Year 80, (Providence, RI: undated) p. 3.
31. The Providence Journal Company, The Providence Journal, "R.I. Planners Accuse Coastal Council of Inertia, Waste and Sloppy Work," June 22, 1979. The Council's reaction is an example of the "Bunker Mentality" noted in Chapter 2, Section E.
32. John A. Lyons, Chairman, Coastal Resources Management Council, June 28, 1979, Letter to Governor J. Joseph Garrahy.
33. Office of Coastal Zone Management, Section 312 Findings, Evaluation of the Rhode Island Coastal Management Program Covering the Grant Period, May, 1978, - February, 1979, (Washington, DC: April 19, 1979) p. 10.
34. Ibid., pp. 7, 10.
35. Division of Coastal Resources, Department of Environmental Management, Coastal Resources Management Section 312 Program Review and Evaluation, (Providence, RI: February 5, 1980), p. 3.

36. RICRMP, p. 41.
37. Richard J. Amato and Lee R. Whitaker, "Rhode Island Coastal Community Land Use Review: A Study of Resources Allocation in the Coastal Community," in Resource Allocation Issues in the Coastal Environment, proceedings of the Coastal Society Fifth Annual Conference, (Arlington, Virginia: November 6-8, 1978) p. 150.
38. Ibid.
39. Private conversation with Mr. Robert Fredericksen, Providence Journal Company Conservation Writer June 21, 1979.
40. Office of Coastal Zone Management, Evaluation of the Rhode Island Coastal Management Program for the Grant Period from January 1, 1979, to December 31, 1979, (Washington, DC: June 6, 1980), p. 9.
41. Division of Coastal Resources Department of Environmental Management: Coastal Resources Management Section 312 Program Review and Evaluation, (Providence, RI: February 5, 1980) pp. 2, 3.
42. RICRMP, Section 120.0-2-D4, p. 46. There is pressure from the Chairman to relax the saltmarsh standards and it is speculated that the motivation to do so is to reduce the number of violations, thereby making the program and CRMC look better.
43. Rhode Island Statewide Planning Program, Department of Administration, Report No. 22, Rhode Island Land Use Policies and Plan, (Providence, RI: June, 1975) p. 161.
44. Division of Coastal Resources, Department of Environmental Management, Coastal Resources Management Section 312 Program Review and Evaluation, (Providence, RI: February 5, 1980).
45. Staff Reports to the Rhode Island Coastal Resources Management Council and Division of Coastal Resources, Department of Environmental Management, Log Entries.
46. Division of Coastal Resources, Department of Environmental Management, Coastal Zone Management Annual Report for Fiscal Year 1980 (Providence, RI: undated) Table I.
47. Ibid., p. 2.
48. This argument ignores the contention that residential development on some barrier beaches such as Coast Guard Barrier Beach, New Shoreham, or all barrier beaches, should be prohibited.

49. East Greenwich Yacht Club et. al. v. The Coastal Resources Management Council, et. al., Supreme Court Opinion, No. 75-280 M.P., July 11, 1977, p. 8.
50. Dalmazio O. Santini v. John A Lyons, et. als., Superior Court Decision, C.A. No. 74-3158, C.A. No. 74-3159, and C.A. No. 79-1162, filed May 15, 1980, pp. 9, 10.
51. Sebastian Milardo v. The Coastal Resources Management Council, et. al., Superior Court Decision, C.A. No. 77-735 and C.A. No. 77-2245, filed June 7, 1979 pp. 9, 10.
52. John A. Lyons, et als. v. Nancy Fillmore, Superior Court Decision, C.A. No. 72-182, no file date, p. 14.
53. Nancy B. Fillmore v. John A. Lyons, et. als., Superior Court Decision, C.A. No. 73-2373, no file date, pp. 4, 5.
54. John A. Lyons, Chairman, Rhode Island Coastal Resources Management Council, Letter to Mr. George Favre, Editor, Editorial Department, Providence Journal-Bulletin, September 15, 1980.
55. The Narragansett Times. "South Kingstown loses key beach building ban decision." October 16, 1980; and the Providence Journal Company, The Evening Bulletin, "Barrier Beach Construction ban held illegal," October 16, 1980.
56. See Bernard J. Frieden, "The Consumer's Stake in Environmental Regulation," The American Academy of Political and Social Science: The Annals (Philadelphia: September, 1980), Vol 451, pp. 36-44. While Frieden's thesis is not narrowly applied to one sensitive resource type, his conclusion is no less true: that growth control and environmental politics raise costs to consumers while contributing little to the improvement of the public environment.
57. RICRMP, p. 28, See also "Priorities for Use in the Rhode Island Coastal Region."
58. Coastal Resources Management Council, TRANSCRIPT, August 14, 1979, p. 31.
59. Ibid., p. 36.
60. Ibid., pp. 35-36.
61. Ibid., p. 38.
62. Ibid., p. 93.

63. RICRMP, pp. 11, 16. See also "Geographic Areas of Particular Concern (GAPC) and Areas for Preservation and Restoration (APR) in the Rhode Island Coastal Region."
64. Coastal Resources Management Council, TRANSCRIPT, August 14, 1979, pp. 91-92.
65. Ibid., p. 93.
66. Ibid., p. 95.
67. Ibid., P. 96.
68. Border Hill Mobile Home Park, Inc., File 76-12-9, Assent No. 60-B.I. Sound-77.
69. Ibid.
70. Border Hill Mobile Home Park, Inc., File 79-7-13, Recommendations of Subcommittee.
71. Coastal Resources Management Council, TRANSCRIPT, February 12, 1980, p. 37.
72. Border Hill Mobile Home Park, Inc., File 79-7-13.
73. John A. Lyons, Chairman, Coastal Resources Management Council. Letter to George W. Greene, President, Border Hill Mobile Home Park, Inc., February 21, 1980.
74. Ibid., February 23, 1981.
75. Coastal Resources Management Council, TRANSCRIPT, March 24, 1981, Discussion on Cove Haven Marina, File 75-10-12, to construct and maintain floating piers and to dredge an area 300 feet by 210 feet to 5 feet mean low water in Bullocks Cove.
76. Coastal Resources Management Council, Decision, Petition of Edward and Shirley Ventura, Docket No. 79-7-19, p. 1.
77. Ibid., p. 2.
78. Ibid., p. 3.
79. RICRMP, p. 28.
80. Prior, File No. 81-1-8.
81. Ventura, p. 2.
82. William Barnack V. The Coastal Resources Management Council of the State of Rhode Island, et. als., Superior Court Decision, State of Rhode Island and Providence Plantations, SC, Providence, C.A. No. 79-3842, p. 15.

83. The CRMC's (i.e., the state's) jurisdiction over coastal waters below mean high water has been upheld in court. James Betres et. als. v. Coastal Resources Management Council, et. als., Superior Court Decision, State of Rhode Island and Providence Plantations, SC, Bristol, filed September 26, 1980, C.A. No. 78-3858, p. 3.
84. Amato and Whitaker, p. 143.
85. Ibid., p. 142.
86. Ibid.
87. Lee R. Whitaker, Senior Planner, Rhode Island State Department of Environmental Management, Division of Coastal Resources, Letter to Stephen B. Olsen, Coordinator, University of Rhode Island, Coastal Resources Center, October 2, 1980.
88. Ibid.
89. Ibid.
90. John A. Lyons, Chairman, Coastal Resources Management Council, Letter to Adrian Golman (sic) and George Sherwood, November 29, 1979.
91. Ibid.
92. Nicholas A. Pisani, "Rhode Island Coastal Resources Management Council Engineer's Field Report," signed and dated November 1, 1979.
93. Ibid.
94. Nicholas A. Pisani, Civil Engineer, Inter-Office Memo re: Goldman and Sherwood, Quonochontaug/Charlestown, March 11, 1981.
95. Ibid.
96. Ibid.
97. Jim Parkhurst, "Rhode Island Coastal Resources Management Council Biologist's field report," March 30, 1981, report on Callahan.
98. Charles W. Link, Building Inspector, Town of Charlestown, Letter to Coastal Resources Management Council, January 16, 1980.
99. Ibid.
100. The Miami Herald, "Coastal Zone Plan Proves Perplexing," April 16, 1978.
101. Ibid.
102. Ibid.

103. Daniel R. Mandelker, "Symposium: Law and Planning in the Environmental Decade," Journal of the American Planning Association, Vol. 46, No. 2 (April, 1980), p. 133.
104. Sara Chasis, "The Coastal Zone Management Act," Journal of the American Planning Association, Vol. 46, No. 2 (April, 1980), pp. 147-148.
105. Ibid., p. 148.
106. James V. Quinn, File 80-1-9
107. Alfred L. Hawkes, Executive Director, The Audubon Society of Rhode Island, Letter to John A. Lyons, Chairman, Coastal Resources Management Council, February 25, 1980.
108. Ibid.
109. RICMP, p. 13.
110. Gilbert A. Plumb, File No. 78-9-5, Assent No. 113—Block Island Sound-78, issued 16 November 1978.
111. Ibid., Inter-Office Memo from Daniel W. Varin to John A. Lyons, October 4, 1978.
112. RICMP, p. 42.
113. Ibid., p. 51.
114. John A. Lyons, Chairman, Coastal Resources Management Council, Letter to Gilbert A. Plumb, November 14, 1979.
115. _____, November 28, 1980.
116. Robert Carter File 79-7-16; Richard Devereaux File Nos. 79-9-17 and 79-9-18.
117. The Providence Journal Company, The Providence Journal, "Coastal Council challenged on beach homes," September 12, 1980.
118. John A. Lyons, Letter to George Favre, Editor, Editorial Development, Providence Journal Bulletin, September 14, 1980.
119. The Providence Journal Company, The Providence Journal, "Preserve Block Island Beach," September 14, 1980.
120. R. Daniel Prentiss, "Construction permits for barrier beaches," Letter to the Editor, The Providence Journal, October 19, 1980.
121. The Providence Journal Company, The Providence Journal, "Roberts to sue Coastal Council of Permits Given, November 20, 1980.

122. Ibid.
123. H.R. 5986 96th Congress and Audrey L. Dixon, Coastal Barrier Islands Project, Letter to John A. Lyons, Chairman, CRMC, July 16, 1980.
124. John A. Lyons, Letter to the Honorable Philip W. Burton, U.S. House of Representatives, March 25, 1980.
125. Block Isle Corporation, File 81-2-1.
Conant, File 80-1-1; 81-3-1.
Sorenson, File 80-10-20.
126. Sorenson, File 80-10-20.
127. Howell Conant letter to CRMC, February 14, 1981.
128. Michael Glazer, NOAA, OCM, Assistant Administrator, "Evaluation of the Rhode Island Coastal Management Program for the Grant Period from January 1, 1979, to December 31, 1979," June 6, 1980, p. 8.
129. John A. Lyons, Chairman, CRMC, NOTICE June 26, 1980.
130. Lee R. Whitaker, "Narrow River Policy Options," Inter-Office Memo to the Coastal Resources Management Council, June 30, 1980. It is important to note that these attitudes were not obtained through a statistically valid questionnaire or some other "scientific" means. They were the observations of the author obtained through interviews with local governmental planning officials, a local public works engineer, professional staff at the University of Rhode Island Coastal Resources Center and within the state Department of Environmental Management, and members of the Narrow River Preservation Association, Inc.
131. Ibid., p. 3.
132. RICRMP, p. 32.
133. RICRMP, p. 131.
134. Ibid.
135. Town of South Kingstown, File 76-3-15.
136. Ibid.
137. Town of Narragansett, File 79-8-15
138. RICRMP, pp. 133-134.
139. Town of Narragansett, File 80-9-13
140. Town of Narragansett, File 80-3-9: TRANSCRIPT, August 12, 1980, p. 41.

141. George L. Seavey, Rhode Island's Coastal Natural Areas: Priorities for Protection and Management, (Kingston: University of Rhode Island Coastal Resources Center, 1975), pp. 39-41.
142. River Landscapes, A Plan for the Narrow River Watershed, prepared for the Tri-Town Narrow River Planning Committee, (Cambridge, Massachusetts, Roy Mann Associates, Inc., and Maurice and Gary Inc., June 1976), p. 12. Funded by OCZM and CRMC in part.
143. Ibid., p. 14.
144. Ibid., pp. 14-15.
145. John MCN Sieburth, Water Quality of the Narrow River 1959-1979 (Narrow River Preservation Association: Undated), p. 5
146. RIPE, Inc., Pettaquamscutt River Individual Sewage Disposal Systems Study, (Wakefield, RI: RIPE, Inc., undated), p. 34.
147. Robert E. Richardson, State of Rhode Island and Providence Plantations Department of Environmental Management, Division of Water Resources, Shoreline Survey and Shore Sampling of Pettaquamscutt River 4, 5, and 13 September, 1979 (Providence, Rhode Island, RIDEM, October 5, 1979), p. 4
148. The Narragansett Times, "More River Sampling Promised," December 4, 1980.
149. Anna Prager, Town Planner, et. al., Letter to Coastal Resources Management Council regarding file No. 79-8-18 (Harry Readyhough), September 28, 1979.

Jack Ryan, President, Federated Rhode Island Sportsmen's Clubs, Inc., September 24, 1979, Letter to Coastal Resources Management Council regarding Files 79-8-15, 79-8-14, 79-8-18 and 79-9-1.
150. Mary Beck, Recording Secretary, Town of Narragansett, Conservation Commission, Letter to Coastal Resources Management Council regarding File 79-9-33 (William Shea), October 23, 1979. Susan M. Pavao, Secretary, Mattatuxet Improvement Association Letter to Coastal Resources regarding File 79-9-33, November 9, 1979.
151. Daniel W. Varin, Chief, Statewide Planning Program, to John A. Lyons, Chairman, Coastal Resources Management Council, statement for the record of the public hearing on File 79-11-8 (Sherman J. Lindberg), January 21, 1980, (NOTE: Application was withdrawn by applicant and discharged by CRMC).
152. Thomas A. Greene, Second Vice President, Federated Rhode Island Sportsmen Club, Inc., October 31, 1979, Letter to Coastal Resources Management Council.

153. River Landscapes, p. 22.
154. Ibid., p. 23
155. Ibid., p. 18.
156. Ibid., p. 28. Note: There is evidence of construction of residential dwellings below the base flood elevation along the river. Reference Jose Fortes File No. 77-11-5 approved December 16, 1977, six months after the July 1, 1977, State Building Code Rules and Regulations for construction in Flood Hazard Areas.
157. Ibid., p. 31.
158. Ibid., p. 32. Reference Files 80-1-19, 80-9-13 for 16' force main pump station.
159. Ibid., p. 34.
160. W.E.R. LaFarge, President, Narrow River Preservation Association Letter to John Lyons, Chairman, Coastal Resources Management Council, February 14, 1980.
161. Coastal Resources Management Council, TRANSCRIPT, January 8, 1980, pp. 35-36, Discussion on Grove, File 79-9-1.
162. Ibid., March 11, 1980, pp. 18-23, Discussion on Howard, File 79-7-5 for a single-family dwelling with ISDS on Central Barrier Beach at Quonochontaug, Charlestown, (see also Chapter 3G 2A).
163. Richard O. Brooks and Kenneth Payne, et. als. "Presentation of the Audubon Society of Rhode Island, The Natural Resources Defense Council, Inc., Ecology Action of Rhode Island, Inc., Conservation Law Foundation of Rhode Island, American Littoral Society, Inc.," Before the Rhode Island Coastal Resources Management Council, July 26, 1976, State House, Rhode Island, pp. 4-6.
164. Ibid., p. 7.
165. Ibid., p. 8.
166. Ibid.,
167. Ibid.
168. Ibid.
169. Ibid., pp. 10-14.
170. Ibid., p. 11.
171. Ibid., p. 17-18

172. Ibid., p. 19.
173. Ibid.
174. Ibid., p. 19-20.
175. Ibid., p. 28.
176. Ibid., p. 29.
177. Ibid., p. 30.
178. Ibid., p. 31.
179. Ibid., p. 43.
180. Ibid., p. 45.
181. William Barnack V. The Coastal Resources Management Council of the State of Rhode Island, et. als., Superior Court Decision, State of Rhode Island and Providence Plantations, SC. Providence, C.A. No. 79-3842, p. 15.
182. Ibid., p. 16.
183. Ibid., p. 12.
184. Brooks and Payne, p. 47.
185. Ibid., pp. 47-48.
186. Chasis, p. 150.
187. Brooks and Payne, p. 48.
188. Ibid.
189. Ibid.
190. Ibid., p. 49.
191. Ibid., p. 87.
192. Ibid., p. 91.
193. Ibid., p. 192.
194. John A. Lyons, Chairman, CCMC, Letter to Ramon Penna, Governor's Office on Coastal Zone Management, September 29.
195. Brooks and Payne, p. 94.
196. David H. Hunsberger, Management Systems Consultant, "Survey of Coastal Zone Permit Information System, State Site Visit Report: Rhode Island," draft for comment, December 17, 1979.

197. Brooks and Payne, p. 94.
198. Ibid., p. 95.
199. Ibid., p. 95.
200. Ibid., p. 97.
201. Ibid., p. 110.
202. Malcolm J. Grant, "Rhode Island Position Paper on State Obligations Under Section 306 CZMA, State Response to those Obligations," September, 1976.
203. John A. Lyons, letter to Mr. Robert Knecht, Assistant Administrator, OCZM, August 19, 1976.
204. Malcolm J. Grant, "A Brief and Critical Look at Coastal Management on the State Level," for the Coastal Resources Center, University of Rhode Island, November, 1972, p. 5.
205. Lee R. Whitaker, personal recollection of a discussion of Coastal Zone Management and Land Management with a Washington State Coastal Management staff person, 1976, Airlie, Virginia, State Coastal Program Managers Conference. Rhode Island was on the threshold of enacting land use management legislation in 1975. The effort failed.
206. Robert W. Knecht, Assistant Administrator for Coastal Zone Management letter to John A. Lyons, Chairman, Coastal Resources Management Council, September 14, 1976.
207. Grant, "Obligations."
208. OCZM Administrator, Knecht, was viewed as a friend of the Rhode Island Program partly because he had been a graduating member of one of the first Masters of Marine Affairs Programs.
209. Grant, "Obligations," p. 54.
210. Ibid., p. 31.
211. Ibid., p. 55.
212. Ibid., p. 2.
213. Ibid., p. 9.
214. Robert W. Knecht, "Findings" for approval of the Rhode Island Coastal Management Program, May 12, 1978, pp. 3, 4.
215. Grant "Obligations." p. 3.

216. Stephen Olsen, Letter to Grant, Lyons, Esposito, Whitaker, Zeitlin-Hale, November 23, 1976.
217. Michael Glazer, Assistant Administrator, Office of Coastal Zone Management, NOAA, "Evaluation of the Rhode Island Coastal Management Program for the Grant Period from January 1, 1979, to December 31, 1979" June 6, 1980, p. 9.
218. Response to the Request for Information Regarding the Third Annual "312" Review (1980) of the Rhode Island Coastal Resources Management Program, undated, pp. 59-60. Case of Roy T. Howard, File No. 80-9-18.
219. Coastal Resources Management Council, TRANSCRIPT, October 28, 1980, pp. 58-60.
220. John A. Lyons, Chairman, Coastal Resources Management Council, Letter to Roy T. Howard, File 80-9-18, Citing three stipulation violations, March 31, 1981.
221. Glazer, Evaluation, p. 9.
222. Coastal Resources Management Council, TRANSCRIPT, July 10, 1979, p. 64.
223. Ibid., August 14, 1979, p. 77.
224. Ibid., September 11, 1979, p. 41.
225. Ibid., April 8, 1980, p. 35.
226. Ibid., August 26, 1981, p. 65.
227. Glazer, Evaluation, p. 9.
228. Ibid., p. 5.
229. Chasis, p. 152.
230. Ibid., p. 153.
231. Stephen Olsen, Memorandum to Invitees to the January 29. Coastal Resources Management Program Workshops, February 16, 1981, pp. 1, 2
232. Malcolm J. Grant, "A Brief and Critical Look at Coastal Management on the State Land," for the Coastal Resources Center, University of Rhode Island, November, 1972.
233. Ibid.
234. Ibid.
235. Ibid., p. 6.

236. Ibid.

237. Ibid., p. 7.

We don't live in Plato's Commonwealth, and when we can't have perfection, we ought to comply with the measure that is least remote from it.

- Thomas Hutchinson

CHAPTER FOUR: FINDINGS AND RECOMMENDATIONS

A. Jurisdiction and Control.

1. Findings:

- a. The Stratton Commission at the National level and the Rhode Island Governor's First Committee on the Coastal Zone emphasized the need for a strong state role in coastal resources management.

The Rhode Island Program evolved with a strong local representation in the management process, resulting in a program dominated by local decision-making and an attitude toward resource management that is akin to campanilism, that is, short sighted and narrowly focused.

- b. The RICRMP leaves to local zoning and existing land use patterns the determination of the priority for use of the land, including the land within 200 feet of the water. This in no small measure dictates the use of the immediate near-shore waters and potential effects of development on physiographical features. These uses have short- and long-term impacts on the areas under state control, but the state has little or no control over their determination.

- c. At the present rate of development in coastal communities in areas with close proximity to coastal waters and physiographic features, lack of state control or strong influence over land use will foreclose the prospects of future state

management of the land and makes it difficult to impossible to control the effects of land development on coastal waters and physiological features.

- d. The Rhode Island Coastal Region is a jurisdiction patchwork as a result of coastal resources management. The 200-foot inland zone, which is designed to protect coastal physiographical features, does nothing to determine use. It is, rather, a zone for site impact mitigation purposes and confusion occurs over the authorities exercised within it. Even on barrier beaches where the state's authority is paramount, the CRMC typically accedes to local authorities.

- e. The Council has failed to adequately fulfill its legislative mandate of 46-23-6A of the General Laws of Rhode Island which require that the resources management process shall include the following basic phases:
 - (a) evaluate these resources in terms of their quantity, quality, capability for use, and other key characteristics;
 - (b) determine the current and potential uses of each resource;
 - (c) determine the current and potential problems of each resource;
 - (d) formulate plans and programs for the management of each resource, identifying permitted uses, location, protection measures, and so forth;
 - (e) carry out these resources management programs through implementing authority and coordination of state, federal, local, and private activities; and
 - (f) formulate standards where these do not exist, and reevaluate existing standards.

It has instead adopted a management program that is very process-oriented through its reliance (legitimately so) on the state's Administrative Procedures Act, but which contains little substance of its own. What it does have for substance is broadly applied designations and regulations that do not accurately reflect reality and achieve desired ends in the areas of their specific application.

2. Recommendations:

- a. For more effective and efficient coastal resources management, there needs to be a strengthening of the state's authority in keeping with the Governor's first Committee on the Coastal Zone and the Stratton Commission's recommendations. Minimally, there needs to be the development of special area plans and more clearly stated permissible use. There also needs to be an adoption of state standards governing setbacks from coastal physiographic features, construction elevations and designs, buffer zones in accordance with site specific conditions, erosion and sedimentation controls for project types and for areas prone to erosion, development density requirements, runoff controls, and locational (or siting) criteria. Preliminary Development Standards are offered in Appendix I. These can be adopted and implemented at the local level, implemented on a case-by-case basis by state environmental management staff as presently done, or by a combination of the two methods. Based on the present record of the inability of local building inspectors to render decisions in accordance with the RICRMP, the evidence strongly suggests retention of

maximum amount of state-directed professional implementation of these standards.

- b. In terms of reducing permit processing and other costs to individuals, implementation of landside standards and permissible uses by the local units of government is an attractive option, provided strict implementation in accordance with the adopted standards occurred. This will require enabling legislation. The state-local land management legislation could be a vehicle for this. It, or something similar for the coastal region would be required because there is a lack of local authority to even enforce CRMC permit restrictions. Federal CZMA monies could be passed through the state program manager's office to local governments, once state standards are much more clearly enunciated (and adopted), to upgrade local ordinances. This pass-through money would underwrite the cost of hiring professional expertise for the task; and if each coastal community received \$15,000 per year not to exceed two years, the total cost would be approximately \$630,000 over the two years. The state would continue to implement this aspect of the program until such time as individual communities had its local ordinances brought up to the state standard. Compliance with the standards would be enforced through a combination of local techniques and continuation of the existing "Cease and Desist Order/Orders to Remove and Restore" technique utilized by the CRMC. This option would be restricted to the landside of the coastal region where local jurisdiction is clearly established, thereby

alleviating the jurisdiction hodge podge that presently exists as a result of the 200-foot zone created by the RICRMP. The State Program would retain paramount authority over physiographical features and tidal waters. If federal funding is cut to the bone, then this recommendation will lose its financial incentive.

- c. All "V" high-hazard flood zones should be classified by the RICRMP as geographical areas of particular concern, not just the barrier beaches as presently established, and to extend to them the special development controls now exercised and those contemplated for barrier beaches.
- d. The CRMC should advance its position that it has statutory authority over all physiographical features and can, therefore, establish whatever special area plans, permissible uses and development standards that are required to manage these features in accordance with the goals and the policies of the RICRMP. This includes preempting local zoning control over the state's barrier beaches. If, however, total state control is exercised over the barriers, the state must be prepared to fulfill the role performed by the local building inspector. This can be accomplished through the use of the professional engineering staff now employed by the Coastal Management Program.

B. Overall Management Procedures.

1. Findings.

- a. The Rhode Island Coastal Resources Management Program has failed to produce a resources management plan and process that is predictable and efficient. It has neglected to develop sufficient operational procedures and decision-making criteria, and frequently ignores the few such procedures and criteria which are in place. The CRMC is presently bogged down in the minutiae of trivia, fratricide,^I and politicization of cases to the detriment of overall resources planning and management and attention to major issues. As a result, there is an unnecessary cost to the state and applicants; and it has left implementation of the "burden of proof" requirements to an ad hoc process which places most of the burden on state professional staff, the reverse of the legislative mandate. The lack of a plan or set of special area plans with permissible uses and standards causes the CRMC to make the same fundamental decisions meeting after meeting on routine cases, while creating havoc for some controversial cases.
- b. The number of public hearings on projects needs to be reduced. In calendar year 1980, more than 80 applications received hearings. This annual total has dramatically increased each year since 1978, the year of Section 306 approval. In 1978, 30 hearings were held, while in 1979, the number increased to 42—an increase of 40 percent.

The actual increase of 1980 over 1979 is 102 per-cent. At an estimated \$600.00 per hearing, approximately \$50,000 was spent on public hearings in 1980.

- c. Public hearings as presently held on every little case produce little information in addition to that collected through the normal 30-day notice period. This is predominately because by the time an applicant reaches the stage where a CRMC assent is required, all other approvals, including local zoning and subdivision approval, and state ISDS and Wetlands approvals, have been secured. Changes in the program in accordance with A.2a. and B2a. will reduce the hearing cost by at least a factor of 10. Hearings should be held for major cases as defined in Chapter 3, Section E.
- d. The present process results in unnecessary delays. The 30-day notice period is unnecessary for most projects involving construction of single-family dwelling units, new individual sewage disposal systems, accessory structures, repairs to buildings, porches, garages, patios, greenhouses, decks, septic system repairs, vegetable gardens, etc.; because an applicant is assured of CRMC approval if plans are submitted, all other approvals have been secured, a \$35.00 filing fee is paid, and a period of 45 to 60 days or more is waited out. Changes in accordance with I.B.1. and II.B.1. and 2. will minimize the waiting period by allowing state approval to occur without the bene-

out involvement of the Council. The staff is the source of these stipulations and rather than put routine permitted projects out to notice, they can be handled almost on the spot by the staff. This is especially pertinent since the RICRMP has become heavily involved in attempting to regulate activities within 200 feet of the mean high water and/or physiographic features. But since the nature of this regulatory effort is rarely a "use" regulation as opposed to site impact mitigation, there is rarely need for a 30-day notice period.

g. From 1969 to September, 1979, the application rate for single-family dwellings and ISDS was 16 percent of the total case load. This percentage increases if the period examined is changed to 1975 to September, 1979, when it then became 20 percent; and, if measured from May, 1978, the time of 306 approval, to September, 1979, the rate swelled to 38 percent of all applications. From December, 1979, until the end of September, 1980, the rate was 55 percent of the case load. And during the period from July, 1979, through August, 1980, 53 percent of the letters of No Objection involved single-family dwellings and/or ISDS, or accessory structures.

h. During the 14-month period, July, 1979, to August, 1980, the Executive Director of the CRMC issued 102 letters of No Objection. Examination of these cases reveals:

(1) there is no paucity of examples where projects fall-

ing under nearly all categories of activity have been sent out to the 30-day notice period; (2) some, but nowhere near all, have stipulations attached governing one or more aspects of the project, such as its time frame or site impact mitigation procedures; (3) too many are so loosely written as to convey to the reader absolutely no idea of what project is receiving the letter, and while this information is supposedly available in the file at the Division of Coastal Resources, it is basically a blank check to the recipient and has resulted in program deviations; (4) not all letters during the sample had a turn-around time that would indicate an advantage of the "letter" vs. "the notice" if measured by time alone, because cases can be documented involving more than 30 days to get the letters out. The same problems have been observed for Cease and Desist Orders.

The Letter of No Objection has evolved as an administrative device to deal with projects that clearly do not require CEMC review under current procedures. But criteria for issuance of such letters and procedures governing their use are weak or nonexistent.

- f. The CEMC consistently "ignores" the advice of the professional staff. This often results in the waste of extensive staff reviews of projects.

- j. The CRMC, by pursuing the minutiae of regulation has lost the initiative or the opportunity to capture initiative in the very issues one would assume it had responsibility for: Upper Bay Quality problems caused by the Providence sewer treatment facility failure; use fees for state waters and bottom lands beyond MEW, particularly where filling occurs or is proposed; examination of alternative courses of action for controlling development on barrier beaches, such as more stringent setbacks, combining lots, acquisition techniques, etc., rather than pursuing nonproductive verbal assaults on the Federal Flood Insurance Program.²
- k. Since September, 1977, the CRMC has met twice per month in "Policy and Planning Meetings," a practice carried on from the Program Development phase. However, in the three years since the RICRMP was adopted, the more than 72 policy and planning committee meetings provided not one additional finding, policy, or regulatory amendment to the RICRMP until January, 1981. During those three years, the cost of those meetings, not counting clerical staff, legal fees, and mileage, is estimated at \$50.00 per CRMC member per an average of seven attendees per meeting or approximately \$25,000 in salaries to members alone. Monthly mileage costs accrued from attendance of all CRMC meetings per month is considerable if one considers all

the opportunities encouraged by the Council: attendance at public hearings, policy and planning meetings, monthly meetings, rights-of-way subcommittee meetings and hearings, standing committee meetings and site visits.³

- I. Under the present operating procedures, the Program captures aspects of subdivision construction, such as installation of roads and drains and after the normal 30-day review process, an assent is issued for the work or a letter of No Objection is issued in less than 30 days. This approval contains site impact mitigation procedures. Under these procedures, all house lots within the CRMC's purview must then be reviewed individually, on a case-by-case basis, whether it involves one lot or many lots. This drives up the administrative costs and the costs to the public. It illustrates a lack of predictability of the Program, while it fails to provide assessment of the full impact of the entire development because it is focused narrowly in the case-by-case decision-making process.

2. Recommendations.

- a. The state needs to develop standards and/or procedures to screen out what should go before the Coastal Resources Management Council and what can be handled at the staff level, as recommended by the Prospectus in 1971. With the proper placement in the RICRMP, permissible uses and standards guiding development in accordance with A.2.a.,

cases not involving use changes should not go before the CRMC. This includes cases involving allowed uses on barrier beaches, affecting other physiographic features, and below mean high water, all of which should be handled at the staff level, thereby freeing the CRMC from the case-by-case material to direct its attention to larger issues of resources allocation; terminate or reduce politicization of cases; cut applicant delays; and pare state operations costs.

- b. The CRMC could become, under B.2.a., a planning and hearing body. It would be responsible for the maintenance of the RICRMP, and whatever modifications or new findings, policies, and regulations are required to that document. It would hear cases out to public hearing. It would adopt an administrative appeals procedure. Denial of applications at the staff level and at the administrative appeals level would be appealed to Superior Court, as now done.
- c. In those cases where the applicant must fulfill burdens of proof obligations, the CRMC should seek professional assistance, either at the staff level or from an independent and qualified source or both, to evaluate the evidence presented by the applicant. This is presently not done on any routine basis beyond a cross-examination method which fails to ensure that the CRMC asks the proper questions, or receives valid information. To do this with the present hearing case load would be too costly. Under

a realistic case load of "major cases," this would make sense and work to preserve the integrity of the process.

- d. In those cases that must go out to public hearing, the hearing should be presided over by a hearing officer, rather than three CRMC members and legal counsel.
- e. There are two methods available to reduce the number of public hearings. First, change the unwritten CRMC policy that gives all Council members the power to call for public hearings on any application. This should be done by adopting written procedures governing the use of this option and providing the staff greater opportunity to work with the public on projects that need modification to meet the requirements of the RICRMP. Second, strengthen the RICRMP's approach to uses, recognizing the preminence of local zoning, but clearly stating areas of state control. This acknowledges the fact that once an individual has received all necessary local approvals, and is not in conflict with an assigned use and standards established by the state, the only grounds for objection is bona fide evidence of environmental degradation of things that the state does control, or conflict with the plan. The permissible uses and standards of the Plan would serve as the screening criteria to enable the staff to accept or reject objections. Objectors who feel they have been aggrieved can petition the Administrative appeals process or Superior Court.

f. The Council's regulations governing development on barrier beaches need to be refined with regards to treatment of building elevations, and the Council should take cognizance of its rule-making. Section 130.0-2A2 of the RICRMP requires an additional 6-foot elevation of the lowest structural members of the lowest floor (above the elevation established by the Flood Insurance Rate Maps). This regulation applies to all barrier beaches. The FIRM maps do not uniformly treat the barrier beaches. The barriers in Narragansett, South Kingstown, and Westerly are divided into "V" (velocity) high hazard zones on ocean side and "A" zones (not subject to wind driven waves) on the pond side. In Middletown, the barrier beaches are completely designated as "A" zones; in Charlestown, the beaches are completely in "V" zones, while Little Compton and New Shoreham have undesignated barrier beaches because the towns are not in the regular flood insurance program as established by the Flood Insurance Administration. The Council has taken to issuing assents for dwellings on barrier beaches, contrary to adopted regulations governing the elevation of such structures, because of "extenuating" circumstances, which appear to be: (1) allowing dwelling elevations to conform to surrounding dwelling elevations, rather than adopted rules; (2) arguments that the RICRMP barrier beach regulations don't apply to "A" zones on barrier beaches (even though they

clearly do); and (3) because "all those dwellings will take a sleigh ride no matter how high they are elevated."

g. Cease and Desist Orders should be issued only when there is clear adverse impacts on physiographical features, water quality, environmental degradation, or conflict with CRMC plans or standards. Whenever appropriate, Cease and Desist Orders should be accompanied by restoration orders which afix a reasonable time period for compliance. In those cases where there exists potential adverse environmental degradation, the staff, acting on behalf of the CRMC, should have the capability to order immediate site impact mitigation procedures. All Cease and Desist Orders should be clearly worded with the specific nature of the violation.

h. The CRMC needs to adopt a greater public advocacy rule for the management plan. In doing so, the CRMC should become an advocate for its Program vis-a-vis the resources management issues. This type of effort would balance the largely public relations effort that presently creates a "media image" that does not exist in reality.

i. Letters of No Objection and Assents should be signed by the applicant to ensure a better understanding on the part of the recipients of the condition of approval. While this would require applicants to pick up the ap-

provals in person, it may serve to reduce the number of assent violations that occur each year. The use of the term "Letter of No Objection" should be abandoned in favor of constant use of the term "Assent."

- j. The Council should adopt "one-stop" permitting procedures for subdivision reviews. Utilizing the recommended development standards, all physiographical features can be protected and water quality protection stipulations can be issued on the entire piece of property. The stipulations could be either recorded with the subdivision at the local level or attached to the property deeds for each lot. Enforcement would occur as it normally does, through the field monitoring process of the staff with perhaps an added boost of assistance from local authorities if given the necessary incentives and legislation.
- k. The present computer system should be abandoned. Ideally, a new machine based record keeping system is needed, and all case load information should be coded in by location identities and by names of individuals, rather than by names and file numbers. Straightforward U.S. Census Bureau location identifiers can then be used to refer to sites easily even when property ownership changes. This is important for assent renewals, for determining the legality of existing facilities, and will be absolutely necessary if a lease fee system is initiated. The location identifier, when keyed to project types, can facilitate data

aggregation by geographic areas and by coastal water-bodies. None of these features are presently available.

1. In those landside areas where the CRMC shares jurisdiction with local government, the Council should abandon its policy of being the last stop in the permitting process. By going before the local building inspector, the local government would have the benefit of the state's technical evaluation of the site and the development standards that apply to it.⁵ This should be a legislated requirement, and it should apply to site work as well as other construction.

2. There has been a constant public concern about the quality of applications, particularly regarding the information they contain and the work they propose to accomplish. This situation can be handled correctly only with a clear enunciation of the requirements and by exercising greater attention to detail at the appropriate staff level.

3. The Council has been found by the Courts to exercise too much discretion in its decision-making process. Also, the burdens of proof requirements of the management program are out of context. The legislative context requires that the CRMC establish the highest and best use of the land and water resources under its jurisdiction, through a resources capability and planning process that creates as an end product a management plan with standards and

criteria. In this context, the burdens of proof provision of the program makes considerable sense. Areas of the coastal region clearly sensitive to development pressures of particular types and those areas especially attractive to development and capable of supporting it through the natural and man-made environment would be clearly enunciated making the burdens of proof more than an obscure facet of the program. The process now serves to trigger burdens of proof that have few firm available measures. This recommendation is made in accordance with A.2a. and B.2a.

C. Organization.

1. Findings.

- a. The CRMC's composition appears to be in violation of the spirit and probably the letter of its statutorily mandated rule of two: Not more than two members will be from any one community. The Town of Narragansett has three members on the Council: a local resident, a town councilman and a state representative.
- b. The Chairmanship and position of Executive Director of the CRMC are held by the same individual. This is an unusual arrangement which is made more unusual by the propensity of this individual acting as Executive Director to become personally involved in nearly every case. This performing of staff level function results in 400 to 500 site visits annually, often in the company of the

Division of Coastal Resources Chief and produces no substance on the record which will assist either the staff or the CRMC in the decision-making process. It also detracts very seriously from the time and effort spent on traditional executive director-type functions which involve policy work, problem solving, advocacy of the organization's positions vis-a-vis issues, intergovernmental contact and coordination at the problem solving level, legislative liaison and initiative, and generally strong leadership at the frontiers of coastal resources management, rather than being mixed into the day-to-day operations.

- c. Seven of the seventeen CRMC members have served on the Council since its inception.

2. Recommendations.

- a. The statutorily mandated rule of two needs to be strictly enforced to ensure proper consistency representation; the appointing powers should remedy this imbalance as soon as possible.
- b. The Chairmanship and Executive Director positions need to be separated. The Council should have a role in selecting the candidate for both positions. Considering that the present Executive Director performs "staff level work," it is questionable if such a position is necessary. If it is necessary, there needs to be criteria

for the Executive Director's position which should include professional certification; experience in source management; clear writing and speaking ability as demonstrated through education and experience, and to borrow an informal criteria from the Rhode Island State Department of Economic Development, should be a non-Rhode Island resident.

- c. The terms for Council membership should be legislatively restricted to one two-to-four year term, and greater inland community and state agency representation should be mandated but without increasing the number of members.
- d. The state should consider organizing its coastal management staff along more functional lines, that is assigning personnel to cover specific types of projects, such as rip rap proposals, aquaculture projects, port development, marina development, or for specific physiographical features such as barrier beaches, coastal marshes, coastal ponds, and estuaries. These personnel would be recognized as experts in their field of specialty and would participate as multi-disciplinary teams whenever necessary.

This recommendation is made necessary because the CRMC's procedures for developing an "evidentiary base" for decisions emphasizes "expert testimony" which on occasion has disparaged staff because of a lack of a particular accreditation.

FOOTNOTES: CHAPTER FOUR

1. Coastal Resources Management Council, TRANSCRIPT, November 13, 1979, p. 11., pp. 101-102; January 8, 1980, p. 71, pp. 83-85, p. 91, p. 101; March 11, 1980, p. 19, p. 23; April 8, 1980, p. 34; May 13, 1980; pp. 77-82; May 27, 1980, pp. 26-27; August 26, 1981, p. 68; September 9, 1980, p. 31; September 23, 1980, p. 20; October 14, 1980, pp. 32-34; October 28, 1980, p. 39.
2. Interestingly, it was reported in the October 26, 1980, Providence Sunday Journal that the CRMC itself spurred development on the Rhode Island Barriers.
3. Rhode Island Department of Administration, Division of Accounts and Controls, Statement A and Statement C for period July 1, 1979, to June 30, 1980, and monthly statements from July 1, 1980, to March, 1981.
4. The RICRMP, Appendix B: 4.1(5) provides that "said formal written objection and/or request for hearing is substantiated by genuine and material reason therefore." There is, however, no administrative procedure to determine if an objection is "genuine and material."
5. Edward A. Thomas, Division Director, Federal Insurance Administration, Boston, Letter to John A. Lyons, Chairman, Coastal Resources Management Council, undated. Reference to Donald R. Kidd, File 79-4-15. Lee R. Whitaker, Division of Coastal Resources, Letter to Victor Parmentier, Supervising Planner, Rhode Island Statewide Planning Program, November 25, 1980.

"When a man knows he is going to be hanged in
a fortnight, it concentrates his mind wonderfully."

- Unknown

EPILOGUE

The RICRMP while often described as one of the best in the nation, and whose legislative mandate is sometimes (questionably) referred to as a "model" for the federal statute, is not working well. It certainly is not performing as the early framers of the state's legislative base had wanted it to work. It is clear that the program's failings are a result of an unrealistic management approach and the propensity of the CRMC to ignore specific programmatic requirements whenever convenient or politically expedient. The RICRMP suffers the fate of many traditional Planning documents—it is ignored.

It is clear that while program success can be enumerated through successful court cases and decisions, denying some of the worst of the proposed development projects that would affect the Rhode Island Coastal Region, it is also clear that major inconsistencies and straightforward inabilities exist; that the overall operating cost to taxpayers and applicants are unnecessarily high; and that the program has failed to focus on and actually solve problems.

One corrective action suggested by the caseload and analysis and the workshop held January 29, 1981, is to switch to a special planning and management approach that would specifically determine permissible uses, prohibitions, and development standards. This would seem to be more realistic than the approach which now broadly applies the same specific regulations and burdens to several dissimilar areas, regardless of how valid or similar the goals sought are for these areas.

The Council's role would be that of the responsible public body to maintain and update the plans as necessary. The CRMC presently has the statutory authority to achieve this.

Aggrieved parties to the plan would have administrative recourse to an appeals board or hearing body and/or solely to the Superior Court. This mechanism is not fully provided by the present enabling legislation and it is not known what the chances are for this change. The Council members, who are not without power, collectively and individually have a vested interest in not changing the system so dramatically. This conclusion is based on the fact that they have resisted for years the resource base or special area planning and management concept with the unsupported argument for "flexibility." However, the time for change may be at hand.

The 1980 federal CZMA reauthorization bill (H.R. 6979) had to be scheduled on the suspension calendar because it failed to reach the floor of Congress under the rule. The bill passed the U.S. House of Representatives at 9:43 p.m. on September 30, 1980, and the Senate at 1:08 a.m. on October 1, 1980. It barely made it under the wire at the start of the federal fiscal year. This was a mark of things to come.

As research for this paper was being prepared, the Reagan Administration initiated budget cutting that will have a profound impact on environmental and other major federal programs, including coastal zone management. The message from the Administration is that CZM has been nurtured by the federal government, and if the experiment has any value, it should be exclusively supported by state and/or local governments.

The budget reductions planned in early 1981 foretold a cessation within 15 months of all federal financial support for the Rhode Island Coastal Program. This will represent an annual loss to the state of one million dollars, and if coastal management in Rhode Island continues as it has during the past three years, state tax dollars will be required to pick up the slack. But because the Reagan Administration is cutting other federal programs as well, the loss of federal revenues to the state will be many millions of dollars, thereby creating intense competition at the state level for whatever tax revenues can be raised.

This paper has revealed that the Coastal Management Program in Rhode Island has a number of operational and basic programmatic flaws. Indeed, one is hard pressed to discover what difference the program has made in Rhode Island that has been worth the expenditure of more than \$4.5 million federal dollars. The logical extension of the Council's argument that the CRMC must be practical, pragmatic, reasonable, or however else one can euphemistically describe the practice of disregarding adopted policies and regulations is to throw the "management" of the public resource back to individuals acting individually with no concern for the overall value of the resource or overall outcome of their many separate actions. That is, why have a Council at all if its actions are producing an end product that differs very little from the end product obtainable through a pure laissez-faire system?

The Council and the program personnel have not been unaware of the program's difficulties, and work has been underway since late Autumn, 1980, to overcome them. Identifying the Program's inherent flaws has been difficult and remains unsettled. The efforts has essentially as-

sumed the scale of a total rewriting of the RICRMP, and as the state's coastal management personnel become more deeply immersed in the complexities of this task of reexamining the classification of coastal waterbodies, the definitions of permissible uses, the preparation of, hopefully, special area plans, the preparation of standards to accompany the permissible uses and the redesignation of Geographic Areas of Particular Concern, progress which always appears to be painful in government, will certainly be slow.

It is the hope here that this research project will lend itself to the programmatic reevaluation now occurring by pointing to those pitfalls that have trapped Rhode Island in an overly expensive and not so effective paper pushing management program. Not surprisingly, the spectre of federal budget cutting has acted as a powerful stimulus to program reform. However, whatever faint hope there may have been that federal oversight would prevent or correct programmatic deviations, will become no hope whatever. The task will fall squarely on the state. During the past three years the only force within the state for attempting to ensure program consistency has been the federally funded personnel. They were not always successful, but with the federal cuts threatening to eliminate nearly all personnel, except the CRMC and its legal staff which are state funded, the one internal force for consistency will be decimated, throwing the responsibility to citizens and the court system.

BIBLIOGRAPHY

1. Amato, Richard J. and Whitaker, Lee R., "Rhode Island Coastal Community Land Use Review: A Study of Resources Allocation in the Coastal Community," Resource Allocation Issues in the Coastal Environment, Arlington, Virginia: Coastal Society, November 6-8, 1978, Proceedings; 130-152.
2. American Planning Association, "Research Digest," Planning. Vol. 46, No. 9 (September, 1980): 24.
3. Beattie, James T., Chief, Division of Coastal Resources Department of Environmental Management, Interoffice Memo to Coastal Resources Management Council Members, October 19, 1979.
4. Brooks, Richard and Payne, Kenneth, et. al., Presentation of Audubon Society of Rhode Island. The Natural Resources Defense Council, Inc., Ecology Action of Rhode Island, Inc., Conservation Law Foundation of Rhode Island, American Littoral Society, Inc., Before the Rhode Island Coastal Resources Management Council, July 26, 1976, State House, Rhode Island.
5. Buerle, David, State of New York Department of State Memorandum to Hank Williams, on Federal CZM Threshold Papers, January 22, 1976.
6. Chasis, Sara, "The Coastal Zone Management Act," JAPA. Vol. 46, No. 2 (April, 1980): 145-153.
7. Coastal Resources Center, University of Rhode Island, A Compilation of the Policies and Regulations Regarding Areas and Activities Above Mean High Water Contained in the Rhode Island Coastal Resources Management Program as adopted in September, 1977. Kingston, Rhode Island: undated.
8. Coastal Resources Center and Resources Management Systems, Inc., The Coastal Resources Management Program: A Handbook for Permit Applicants, June, 1978.
9. Coastal Zone Management Improvement Act of 1980, H.R. 6979.
10. Colman, Steve, New England River Basins Commission, Coastal Zone Task Force Liaison. Memorandum to New England/New York Coastal Zone Task Force, December 12, 1980.
11. Cousins, Kathryn, Northeast Regional Coordinator, Office of Coastal Zone Management. Letter to Stephen Olsen, Coordinator, University of Rhode Island, Coastal Resources Center, December 28, 1976.

12. Evans, Charles H., Environmental Analyst, Connecticut Department of Environmental Protection, Letter to John Sun, February 2, 1976.
13. Frieden, Bernard J., "The Consumer's Stake in Environmental Regulation," The Annals., Vol. 451 (September, 1980): 36-44.
14. Geremia, Frank, Assistant Director of Operations, Rhode Island Department of Environmental Management. Volume of Paper Memorandum, December, 1980.
15. Grant, Malcolm J., "A Brief and Critical Look at Coastal Resources Management on the State Level." Prepared for the University of Rhode Island Coastal Resources Center, November, 1972.
16. "Burden of Proof and other Demonstrations," Memorandum, December 11, 1979.
17. Letter to Jack Lyons, Al Goldman, Denny Esposito, Dan Varin, Lee Whitaker, Steve Olsen, September 14, 1976.
18. Procedural Evaluation of the Rhode Island Coastal Resources Management Program: Recommended Improvements. Hope Valley, RI: Resource Management Systems, Inc., February, 1980.
19. Rhode Island Position Paper on State Obligations Under Section 306 CZMA; State Response to Those Obligations., September, 1976.
20. Hunsberger, David H., Survey of Coastal Zone Permit Information Systems, State Visit Report: Rhode Island, Draft for Comment, Prepared for the Office of Coastal Zone Management, December 17, 1979.
21. Kellar, George, An Approach to Application Evaluation, Kingston, Rhode Island: University of Rhode Island Coastal Resources Center, November 29, 1972.
22. Knecht, Robert W. Findings of Robert W. Knecht, Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, Approval of the Rhode Island Coastal Management Program. Washington, DC: May 12, 1978.
23. Knecht, Robert W., Assistant Administrator for Coastal Zone Management, Letter to John A. Lyons, Chairman, Rhode Island Coastal Resources Management Council, September 14, 1976.
24. LaFarge, W.E.R., President, Narrow River Preservation Association, Letter to John A. Lyons, Chairman, Coastal Resources Management Council, February 14, 1980.

25. LaRoe, Edward T. and Roy, Elizabeth Sheiry. "Federal Inconsistency: Administration of the CZMA in the absence of Explicit Federal Policies and Standards," Resources Allocation Issues in the Coastal Environment. Arlington, Virginia: Coastal Society, November 6-8, 1978, Proceedings, pp. 9-23.
26. Lee, Virginia, An Elusive Compromise: Rhode Island Coastal Lands and Their People., Kingston, RI: University of Rhode Island, Coastal Resources Center, 1980
27. Link, Charles W., Building Inspector, Town of Charlestown, Rhode Island, Letter to Rhode Island Coastal Resources Management Council, January 16, 1980.
28. Lyons, John A., Chairman, Rhode Island Coastal Resources Management Council. Letter to Robert Knecht, Assistant Administrator for Coastal Zone Management, August 19, 1976.
29. Letter to Governor J. Joseph Garrahy, June 28, 1979.
30. Letter to Leo R. McAloon, Jr., Governor's Office for Coastal Zone Management, July 19, 1979.
31. Letter to William Carroll, Executive Assistant to the Governor for Policy, July 25, 1979.
32. Letter to Governor J. Joseph Garrahy, August 9, 1979.
33. Letter to Adrian Golman (sic) and George Sherwood, November 29, 1979.
34. Letter to Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, December 18, 1979.
35. Letter to Robert A. Weygand, Secretary, East Providence Planning Board, March 13, 1980.
36. Letter to George Favre, Editor, Editorial Department, Providence Journal Company, September 15, 1980.
37. Letter to Ramon Pemma, Governor's Office on Coastal Zone Management, September 29, 1980.
38. Notice, June 26, 1980.
39. Mandelker, Daniel R., "Symposium: Law and Planning in the Environmental Decade," Journal of the American Planning Association, (JAPA). Vol. 46, No. 2, (April, 1980): pp. 133-134.

40. Murphy, Dennis T., Director, Department of Natural Resources, Letter to Lee R. Whitaker, Rhode Island Statewide Planning Program, January 31, 1975.
41. McDevitt, Joseph T., Executive Director, Rhode Island League of Cities and Towns, Statement prepared for the Hearing on the Coastal Resources Management Plan. March 20, 1975.
42. Natural Resources Group. Report on Administration of Narragansett Bay. Providence, Rhode Island, January 1, 1969.
43. Office of Coastal Zone Management, Draft 312 Evaluation Findings for the Rhode Island Coastal Management Program Covering Grant Period from January 1, 1979, to December 31, 1979. Washington, DC: April 7, 1980.
44. Evaluation of the Rhode Island Coastal Management Program for the Grant Period from January 1, 1979, to December 31, 1979. Washington, DC: June 6, 1980.
45. Section 312 Findings, Evaluation of the Rhode Island Coastal Management Program Covering the Grant Period May, 1978 - February, 1979. Washington, DC: April 19, 1979.
46. Olsen, Stephen, Coordinator, University of Rhode Island Coastal Resources Center. Letter to Grant, Lyons, Esposito, Whitaker and Zeitein-Hale, November 23, 1976.
47. Letter to Kathryn Cousins, Northeast Regional Coordinator, Office of Coastal Zone Management, December 3, 1976.
48. "Memorandum to Invitees to the January 29 Coastal Resources Management Program Workshop," February 16, 1981.
49. Olsen, Stephen and Lee, Virginia. A Summary and Preliminary Evaluation of Data Pertaining to the Water Quality of Upper Narragansett Bay. Kingston, Rhode Island: University of Rhode Island Coastal Resources Center, May, 1979.
50. Parkhurst, Jim, Rhode Island Coastal Resources Management Council Biologist's Field Report on Falvey, August 27, 1980.
51. Rhode Island Coastal Resources Management Council Biologist's Field Report on Callahan, March 30, 1981.
52. Pease, Allen, Director, State Planning Office, State of Maine. Letter to Mr. John Sun, Northeast Regional Coordinator, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, February 5, 1976.
53. Pease, James R. and Morgan, Michael. "Performance Zoning Comes to Oregon," Planning. Vol. 46, No. 8, (August, 1980): pp. 22-24.

54. Pisani, Nicholas A. Rhode Island Coastal Resources Management Council Engineer's Field Report, November 1, 1979.
55. Pisani, Nicholas A. Civil Engineer. Inter-Office Memo on Goldman and Sherwood, March 11, 1981.
56. Poister, Theodore H., Public Program Analysis: Applied Research Methods. Baltimore: University Park Press, 1978.
57. Rhode Island Coastal Resources Management Council. Coastal Resources Management Plan. Providence, RI: September 18, 1972.
58. State of Rhode Island Coastal Resources Management Program. Providence, RI: Spring, 1976.
59. Summary of Issues Raised at Beginning CRMC's Workshop, November 29, 1972.
60. Rhode Island Department of Environmental Management, Division of Coastal Resources, Coastal Resources Management Council Draft Narrow River Policy Options. Providence, RI: June 30, 1980.
61. Coastal Resources Management Section 312 Program Review and Evaluation. Providence, RI: February 5, 1980.
62. Coastal Zone Management Annual Report for Fiscal Year 80, Providence, Rhode Island: undated.
63. Inventory of CRMC Cease and Desist Orders for Calendar Year 1979. Providence, Rhode Island: January, 1980.
64. "Log Entries," November, 1979-April, 1981.
65. "Staff Reports to the Coastal Resources Management Council," Coastal Resources Management Council Agenda, Providence, RI: February, 1980-April, 1981.
66. Rhode Island Development Council, The Rhode Island Shore, A Regional Guide Plan Study, 1955-1970, Providence, Rhode Island: 1955.
67. Rhode Island Statewide Planning Program. Program Prospectus for the Coastal Resources Management Council, Providence, RI; September, 1971.
68. State Land Use Policies and Plan, Report No. 22, Providence, RI: 1975.
69. State of Rhode Island Report of the Governor's Committee on the Coastal Zone. Providence, RI: March, 1970.

70. 208 Water Quality Management Plan for Rhode Island. Providence, RI: March, 1979.
71. Senate Committee on Commerce, Coastal Zone Management Act Amendments of 1975, Report of the Senate Committee on Commerce on S 586. Washington, DC: U.S. Government Printing Office, 1975.
72. Special Legislative Commission. Final Report of the Special Legislative Commission to Study and Make Recommendations Regarding Appropriate Fees to be charged for all private uses of Public Waters and Other Related Regulations and Statutory Provisions, Providence, RI: February, 1981.
73. State of Rhode Island, Application for Section 350 Coastal Zone Management Program Development Grant. Providence, RI: February 8, 1974.
74. State of Rhode Island. Response to the Request for Information Regarding the Third Annual "312" Review (1980) of the Rhode Island Coastal Resources Management Program. Undated.
75. State of Rhode Island Coastal Resources Management Program. Providence, RI: March 14, 1978.
76. "The Administrative Procedures Act," General Laws of Rhode Island, Title 42, Chapter 35, Section 42.
77. "The Coastal Resources Management Act of 1971," General Laws of Rhode Island, Title 46, Chapter 23, Section 46.
78. "The Shore Development Act of 1956," General Laws of Rhode Island, Title 46, Chapter 3, Section 46.
79. State of Rhode Island and Providence Plantations, Coastal Resources Management Council. Meeting TRANSCRIPTS, July 10, 1979-March 24, 1981.
80. State of Rhode Island and Providence Plantations, Providence, SC. Decision, John A. Lyons, et. als. V. Nancy Fillmore., C.A. No. 72-182.
81. State of Rhode Island and Providence Plantations, Providence, SC. Decision, Nancy B. Fillmore V. John A. Lyons, et. als., C.A. No. 73-2373.
82. State of Rhode Island and Providence Plantations, Supreme Court Opinion, East Greenwich Yacht Club, et. al., V. Coastal Resources Management Council, et. al., No. 75-280 M.P., July 11, 1977.

83. State of Rhode Island and Providence Plantations, Providence, SC. Decision, Milardo V. Coastal Resources Management Council, C.A. No. 77-735, C.A. No. 77-2245, January 7, 1979.
84. State of Rhode Island and Providence Plantations, Bristol, SC Decision, James Betres, et. als. V. Coastal Resources Management Council, et. als. C.A. No. 78-3858.
85. State of Rhode Island and Providence Plantations, Providence, SC. Decision, Dalmazio O. Santini V. John A. Lyons, et. als. C.A. No. 74-3158, C.A. No. 74-3159, A. No. 79-1162, May 15, 1980.
86. State of Rhode Island and Providence Plantations, Providence, SC. Decision. Clean Cove Committee, Inc., V. Coastal Resources Management Council, et. als. C.A. No. 79-1781, December 17, 1979.
87. State of Rhode Island and Providence Plantations, Providence, SC. Decision, William Barnack V. The Coastal Resources Management Council of Rhode Island, et. als. C.A. No. 79-3842.
88. Studds, Representative Gerry E. Chairman, Subcommittee on Oceanography and Pritchard, Representative Joel. Letter to the U.S. House of Representatives Committee on Merchant Marine and Fisheries. September 30, 1980.
89. Tai, Simon W. Social Science Statistics. Santa Maria, California: Goodyear Publishing Company, 1978.
90. The Library of Congress, Congressional Research Service. Legislative History of the Coastal Zone Management Act of 1972, as amended in 1974 and 1976. Washington, DC: U.S. Government Printing Office, 1976.
91. The Miami Herald.
92. The Narragansett Times Company, The Narragansett Times. Narragansett, Rhode Island.
93. The Providence Journal Company, The Providence Sunday Journal, Providence, Rhode Island.
94. The Providence Journal Company, The Providence Journal, Providence, Rhode Island.
95. The Providence Journal Company, The Evening Bulletin, Providence,
96. Thomas, Edward A. Division Director, Federal Insurance Administration, Boston, Letter to John A. Lyons, Chairman, Coastal Resources Management Council: undated.

97. University of Rhode Island, Coastal Resources Center. Unpublished paper on legal principles prepared for the Coastal Ponds Study.
98. Varin, Daniel W., Chief, Rhode Island Statewide Planning Program. "State Coastal Zone Management Workshop, Airlie House, Virginia, November, 4-6, 1975." Memorandum, November 10, 1975.
99. Memorandum on OCZM Threshold Papers for 306 Program Approval, January 12, 1976.
100. Interoffice Memo to John A. Lyons, Chairman, Coastal Resources Management Council, December 28, 1978.
101. Letter to John A. Lyons, Chairman, Coastal Resources Management Council, March 20, 1979.
102. Whitaker, Lee R., Conversation with Robert Fredericksen, Providence Journal-Bulletin, Conservation Writer, June 21, 1979.
103. Personal Notes, CZM Workshop, Asilomar, California, May 27-30, 1975.
104. Personal Notes, Federal Office of Coastal Zone Management Site Visits, Newport, Rhode Island: July 22, 1975.
105. "Burden of Proof Requirements of the RICRMP." Interoffice Memo to J. Lyons, J. Beattie, M. Grant, December 12, 1979.
106. Interoffice Memo to John A. Lyons, Chairman, Coastal Resources Management Council on the letter from the Charlestown Town Building Inspector, January 18, 1980.
107. Whitaker, Lee R., Rhode Island Department of Environmental Management, Division of Coastal Resources. Letter to Stephen B. Olsen, Coordinator, University of Rhode Island Coastal Resources Center, September 26, 1980.
108. Letter to Stephen B. Olsen, Coordinator, University of Rhode Island Coastal Resources Center, October 2, 1980.
109. Letter to Victor Parmentier, Supervising Planner, Rhode Island Statewide Planning Program, November 25, 1980.
110. Wilson, Elizabeth M., Town Clerk, Letter pertaining to the Minutes of the Meeting of the November 26, 1979, South Kingstown Town Council Meeting.
111. Woolard, Regional W., Coastal Resources Management Project Director, New Hampshire, Letter to John Sun, Northwest Regional Coordinator, Office of Coastal Zone Management, January 20, 1976.

APPENDIX I

RHODE ISLAND COASTAL RESOURCES MANAGEMENT DEVELOPMENT STANDARDS

These standards, presently absent in any form from the RICRMP (with the exception of several of the outright prohibitions and a reference to the Rhode Island "Erosion Control Handbook"), have been prepared for inclusion in the RICRMP from a review of 218 cases before the Coastal Resources Management Council from February 12, 1980, through March 10, 1981. The standards apply within the 200-foot inland jurisdiction line created by the RICRMP and areas of primary jurisdiction (below mean high water and physiographical features).

The review period contains a representative number and mix of projects that can be considered either routine or controversial and that have received full Council review. Because these standards have been attached to project assents in the form of staff recommended site-specific stipulations, they can be considered "field tested." They have evolved through the experience of nearly three years of continuous field evaluation of projects by the same personnel funded through CZMA Section 306 grant monies.

As the Council moves to lessen the administrative and paperwork costs of Coastal Resources Management, it is recommended that the staff implement these standards in all routine cases. Routine cases are those which are for permissible uses, which do not conflict with the RICRMP, and which do not trigger the burdens of proof requirements. It is also suggested that the Council give serious thought to pursuing the

legislative initiative of enabling all local communities to adopt these or similar standards and enforce them as a matter of routine policing of local development. Such local adoption would have the beneficial effect of increasing the public's knowledge of what is expected. It would also improve enforcement of the state's policies to preserve and protect the Coastal resources. Properly adopted, these standards could be enforced by local building inspectors as well as state coastal management personnel.

The list appears to be comprehensive, but its lengthiness should not be viewed as a detriment to the program or as a measure of inflexibility. These standards do not apply in all cases, of course, as they are tailored to the site conditions by the staff. Moreover, they are not prohibitive, nor are they inclusive. The provision for on-site mitigation procedures by the staff is necessary to cover situations not provided for here.

The application of these standards is weighted towards undeveloped and nonurban areas because it is precisely those areas where the preservation and protection ethic of the program is most visible. It is also those areas where development proposals can be more easily considered as routine as opposed to major facility development which could occur anywhere, but would be more likely to occur in an urban setting. Regardless of where a major facility would occur, its impact on the surrounding environment would necessitate site specific development standards of a type which the Rhode Island Coastal Program has not yet developed experience for.

General Protection of Physiographical Features.

1. The practice of mowing marsh vegetation shall be discontinued/prohibited.
2. There shall be no fill placed on marshes or beaches.
3. Areas where marsh alteration occurs, such as through man-induced site alteration sedimentation impacts, shall be restored.
4. The creation of saltmarsh shall occur in another location to compensate for lost marsh, in cases where such loss is unavoidable.
(This has occurred for the construction of a new bridge abutment which filled approximately 1600 square feet of marsh, and elsewhere, where alignments of man-made structures could not reasonably be altered.
5. Restriction to the use of rubber tire vehicles shall be enforced where work with machinery on a marsh is unavoidable.
6. Private property signs and chain link fences, shall be prohibited on beaches and barrier beaches.
7. The use of asphalt paving on beaches and barrier beaches and on marshes shall be prohibited.
8. The use of permeable surfaces shall occur for driveways and parking lots on beaches, barrier beaches, and in sensitive natural areas.
9. Grading, filling or disposal of debris and materials on dunes is prohibited.

10. All excavated materials in trenching work shall be placed on the upland side of the trench away from the sensitive natural features.
11. All work shall be monitored by the CRMC staff to implement on-site environmental controls as necessary.
12. The staff shall review project controls with contractors prior to commencement of work. It is the obligation of the Contractor/Applicant to notify the CRMC or its staff when a project is to commence.

Residential Construction, General Construction, Accessory Structures.

1. For ISDS or cesspool replacement, all lines, pipes or other connections to the original, failing sewage disposal system shall be disconnected, removed, or otherwise disconnected.
2. The lowest floor, including the basement, shall be elevated to or above the base flood elevation as defined by the Flood Insurance Rate Maps.
3. A line of staked hay bales shall be placed between the construction site and the water or physiographic feature to control sedimentation and shall be maintained until proper vegetative cover is established.
4. Tie-in with local systems shall occur within 90 days of the day that sewers become operational.
5. Devegetation of the embankment leading to the shore shall be prohibited.

6. A vegetative buffer zone shall be established landward of the marsh, fringe marsh, top of bluff, seacliff, or embankment. This zone shall be staked by the staff engineer or biologist prior to construction. (This zone historically is tailored to site conditions and has been as narrow as 10-feet and as wide as 60-feet. The 50-foot zone is most commonly used. Ten to twenty-five feet is common at the crest of an embankment; 50 feet whenever possible along marshes, 50 to 60 feet along tops of cliffs and bluffs. These are often considered to be minimal and arguably should be greater when conditions warrant).
7. Grading and filling activities shall not encroach on the buffer zone.
8. All excess debris and construction materials shall be properly disposed of at a suitable upland location, not in the buffer zone, the marsh, on the beach, or in the waters of the state.
9. All fill and disturbed areas shall be vegetated as soon as possible (or covered with mulch) to prevent erosion.
10. Hay bales shall be staked at the toe of the fill and maintained until the fill is stabilized with vegetative cover.
11. Eroding embankments shall be restored immediately.
12. In accordance with the state's adopted 208 Water Quality Management Plan, chemicals such as fertilizers and pesticides shall be carefully and sparingly applied along sensitive natural areas such as the Upper Narrow River and especially fragile coastal ponds.

13. Low flow water devices and prohibition of washing machines and dishwashers shall be implemented where ISDS systems are installed in delicate areas (shallow depth to water table, coastal ponds, perhaps upper Narrow River).
14. The stock-piling of fill and materials shall be set back from the top of embankments, edge of bulkheads, etc., 10 to 50 feet as site conditions allow.
15. Excavation and grading shall be restricted to those activities and areas necessary for the actual construction of the dwelling, building or ISDS.
16. Hand excavation of footings shall occur in particularly sensitive areas where the use of machinery is not only inappropriate but not vitally necessary to accomplish the work.
17. Permeable surface for driveways, parking areas, etc., shall be utilized whenever feasible, especially in sensitive natural areas where runoff is to be kept to a minimum.
18. Point source types of discharges shall be prohibited on steep embankments.
19. In "A" flood zones where substantial amounts of fill are required, particularly around low-lying portions of coastal pond areas, the use of fill shall be prohibited, and dwellings shall be elevated on parallel concrete walls or on pilings or columns.

20. All single-family building additions shall require an ISDS "change of use" permit.
21. All new ISDS systems require ISDS permits. Applicant's are advised to meet on-site with CRMC staff prior to the commencement of ISDS groundwater tests, etc., to discuss location, setbacks, etc. (This is offered in lieu of a standard ISDS setback and density requirement which should be prepared for coastal areas, but appears to be considerably down the line.)
22. Extensive filling in the Coastal Flood Plain, when necessary and permitted, shall be restricted to the nonpeak hurricane season to minimize the probability of washout.
23. The Conversion of dwellings from seasonal use to year-round use shall require an ISDS upgrading, if necessary.

REFERENCE: -erosion and sedimentation controls.

Residential Construction on a Barrier Beach.

1. Revegetation of the site shall occur in accordance with the staff recommendations for vegetative types and planting schedules (beach grass, pea, etc.)
2. Buffer zones shall be established as a necessary step to protect sensitive features, such as dunes and barrier wetlands.
3. The dwelling shall be anchored to pilings in accordance with the Rhode Island State Building Code for construction in Flood Hazard

Areas, elevated 6 feet above the 100-year flood level established by the Flood Insurance Rate Maps, and with pilings driven deep enough to withstand scour.

4. A registered professional engineer or architect shall certify that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity and hurricane wave wash.
5. All debris and excess building materials shall be properly disposed of at a suitable upland location, not on the dune, the marsh, or in the waters of the state.
6. Construction activities or alterations shall be confined to that area landward of the dune or dune remnant. The dune shall be staked out by the staff biologist or the staff engineer.

REFERENCES: -Residential Construction, General Construction, Accessory Structures.
-Erosion and sedimentation controls.
-General Protection of Physiographical Features

Commercial Building Construction.

1. The structure shall be elevated to or above the appropriate base flood elevation or flood-proofed in accordance with the Rhode Island State Building Code for construction in Flood Hazard Areas (Article 4, Section 300.23).
2. Local nonsupervised fire alarm system shall be installed where appropriate.

3. Monitoring or inspection of the integrity of buried fuel storage tanks shall be required.

REFERENCE: -Residential Constuction, General Construction, Accessory Structures
-Erosion and sedimentation controls

Dredging.

1. Techniques utilized shall be to minimize turbidity and sedimentation.
2. To prevent the release of obnoxious odors and minimize impacts on marine organisms, dredging shall preferably occur in cool months.
3. Soil cover shall be used to cap the dredged material to prevent the release of obnoxious odors, if necessary.
4. Dewatering of dredged material shall occur behind a berm of sufficient height to contain the material; hay bales shall be staked around the outside perimeter of the berm to capture sediment laden water, if necessary.
5. Shellfish dredged from waters classified SB or lower shall not be made available for consumption or for bait.
6. All dredged areas shall have a bottom slope of 50 percent or less to aid in circulation and flushing.
7. Dredged material disposed of on site shall be covered with a 1 to 5-foot clean earth cover.

Piers, Docks, Floats

1. All pilings shall be securely driven into the substrate.
2. The minimum spacing between decking shall be no less than one-half inch to allow light penetration to fringe marsh, and the minimum dock height shall be one to two feet above marsh vegetation.
3. All materials, removed pilings, and excess debris shall be properly disposed of at a suitable upland location, not in the waters of the state (or on the beach or on the marsh).
4. Discharge of wastes from boats using this facility into the waters of the state, shall be prohibited.
5. No grading or filling activities along the shoreline shall occur without the review or approval of the CRMC.
6. Pilings shall not be placed in the fringe marsh.
7. Pier deck shall maintain clearance over mean high water to allow lateral access. (In most cases, this clearance has been stipulated at 5 or 6 feet).
8. The pier shall be abutted to the embankment without alteration of the embankment, or the embankment shall be properly cutback and stabilized, if necessary.
9. Standard dock width shall be no greater than 4 feet.
10. Floats and ramps and other equipment shall not be stored on the marsh or embankments.

Boat Launching Ramps.

1. All work on boat launching ramps shall be confined to the low tidal cycle.
2. All excavated material shall be removed from the site.
3. The ramp shall be extended upland far enough to prevent wave runup and washout at the inland edge.
4. Concrete railroad ties or similar concrete flexible base shall be used for boat ramps in low energy wave areas, placed on a gravel base to resist undercutting and cracking.

Marina Facilities.

1. Pumpout facilities shall be installed as the need arises.
2. Sufficient sanitary facilities shall be provided to service additional marina users.
3. The discharge of wastes from boats using this facility into the waters of the state be prohibited.

REFERENCE: -Piers, docks, flats, ramps
 -Dredging
 -Rip rap and Other Shoreline Protection Facilities

Rip Rap and Other Shoreline Protection Facilities.

1. The toe stone shall be placed in a toe trench at a depth equivalent of mean low water.
2. Vertical motared seawalls shall be generally prohibited as they incur damage from strong wave action. The use of rip rap type walls stepped into the embankment shall be preferred technique if nonstructural techniques are not feasible.

3. There shall be a uniform grade and slope pitch controls not to exceed a maximum 40° slope.
4. The staff biologist shall ~~stake~~ the marsh or the staff engineer shall ~~stake the toe of the facility~~ prior to the commencement of work.
5. Machinery shall not operate in the marsh.
6. Groins shall not be constructed of asphalt or soil; only concrete or rock material properly placed (not dumped) and angled in with the longest axis parallel to the ground shall be utilized.
7. Gravel or crushed stone shall be placed behind the wall to stabilize the structure and to serve as a filtering layer for sediments.
8. All rip rap shall be placed, not dumped.
9. The ends of the rip rap shall be tied in with the remainder of the embankment or existing walls.
10. Wall shall have drainage allowances.
11. Special engineering or construction requirements shall occur in cases involving repair of old and dilapidated stone piers, walls, etc.

Erosion and Sedimentation Controls.

(NOTE: These are complimentary to or duplication of techniques described in the State of Rhode Island Erosion Control Handbook).

1. Downspouts shall discharge underground or onto splash pads to diffuse ~~spot runoff~~.
2. The use of filter cloth, jute matting, fiber mesh fence or filter fabric fence, crushed stone revetments, sedimentation barriers, check dams, sod, seed berms, ditches, and swales shall be utilized where appropriate to control erosion.

3. Low berms or curbs shall be appropriately placed to prevent erosion from runoff, especially on steep embankments.
4. Stairways to piers, from embankments, shall be elevated on small piles to prevent vegetative disturbance.
5. Dewatering discharges shall pass through hay bale and/or crushed stone sediment traps.
6. Dewatering wells used to lower water table during deep excavations shall be driven points or drilled casing.
7. Dewatering discharges shall not be directed into storm drains.

Drainage Facilities.

1. Drains shall have three-foot sumps with permeable bottoms.
2. Grease traps and oil separators shall be installed as necessary.
3. Absorbant materials shall be used to capture runoff bituminous liquids during paving operations.
4. Outfalls shall have splash pads of proper design size to prevent scour.
5. Screens or grates shall be placed over the outfalls to trap debris.
6. A maintenance schedule shall be required for street cleaning and cleaning sumps and outfalls.
7. No tie-ins with buildings or sewage systems shall be allowed.
8. Natural stream beds and/or swales shall be utilized whenever possible.

REFERENCE: -Rip rap and Other Shoreline Protection Facilities.

Aquaculture.

1. Assent shall be issued on an experimental basis for three years.
2. Applicant shall file semiannual reports with the CRMC, providing all data and information as required by the DEM Aquaculturist.
3. Adequate markers delineating the site shall be installed and maintained.
4. Projects shall be for the cultivation of quahaugs, oysters, and mussels exclusively.
5. Applicant/owner shall be liable for clean up and restoration in the event of abandonment.
6. Owner shall notify the CRMC 30 days prior to abandonment.
7. A \$20,000 performance bond shall be posted.
8. No attempts to implement predator control shall occur without CRMC consent.
9. Project shall be monitored by the DEM Fish and Wildlife Biologist (Aquaculturist).

NOTE: Aquaculture presently is not a routine use of coastal waters. Designation of aquaculture zones appears to be desirable and technically feasible.

Miscellaneous.

1. All fill, when utilized, shall be properly compacted and vegetated.
2. All sewage pumping stations shall be flood-proofed below the base flood level (certified by a registered professional engineer or architect).
3. All subdrains shall be constructed of 6" pipe and the pipe traversing the horizontal downslope leg shall be solid, not perforated,

and all joints shall be tight.

4. Access to the shoreline across sensitive features down steep embankments shall be managed by a stairway, not a path.
5. All fill material shall be clean and free of matter that could cause pollution of the waters of the state.
6. The right-of-way to the shore shall be kept free and clear of all materials and equipment used for construction of said project.

Subdivisions.

1. Subdivision lot sizes in sensitive natural areas (Narrow River Water Shed, Coastal Ponds, particular coves) shall be of sufficient size to allow low density development. (In accordance with the 208 Water Quality Management Plan, the minimum lot size in areas to be served by individual subsurface disposal systems and public waters should be at least 15,000 square feet; 60,000 square feet in areas served by ISDS and private wells).
2. Cluster type development shall be the preferred development technique in all coastal areas. (Local communities should zone water front areas for large-lot or cluster-type developments to reduce runoff and related impacts on coastal waters.)
3. Construction of storm water runoff impoundment areas shall be favored as a means to reduce or prevent storm water runoff into coastal waters. (The 208 Plan recommends natural buffer strips of 300 feet from the rainy season flow line of a stream or the

high water mark of a natural body of standing water in rural areas, wherever possible.)

4. Conservation easements (or minimally buffer zones) shall be established upland from sensitive physiographical features.
5. Lots shall be combined, wherever possible, in sensitive natural areas to reduce densities and allow setbacks and buffer zones in accordance with the standards contained herein.
6. Where a conflict arises between protection of coastal physiological features and waters in accordance with the standards contained herein, and local requirements, applicant's shall first seek relief from local authorities.

REFERENCE: -General Protection of Physiographical Features
-Residential Constructions, General Construction,
Accessory Structure
-Erosion Controls
-Drainage Facilities

It is recommended that if these standards are amended to the RICRMP, they should similarly be amended to the applicant's handbook, with illustrations. This is similar to the "Developer's Handbook" approach utilized by other coastal states.

APPENDIX II: TABULATED PROJECT DATA
BY COMMUNITY, WATERBODY
AND PROJECT TYPE

TABLE II-1

PROJECTS BEFORE CRMC BY COASTAL WATERBODY

<u>WATERBODY/COMMUNITY</u>	<u>1/01/75 thru (1) 9/30/79</u>	<u>5/16/78 thru (1) 9/30/79</u>	<u>11/19/79 thru (2) 12/31/80</u>
I. NARRAGANSETT BAY REGION/DRAINAGE BASIN:			
Academy Cove, N. Kingstown	3	1	1
Allens Harbor, N. Kingstown	-	-	2
Apponaug Cove, Warwick	2	1	1
*Barrington River, Barrington	16	-	15
Bissels Cove, N. Kingstown	1	1	2
Blue Bill Cove, Portsmouth	2	1	-
Brenton Cove, Newport	2	1	1
Bristol Harbor, Bristol	2	1	4
Brushneck Cove, Warwick	4	2	2
Bullocks Cove, East Providence/Barrington	9	-	5
Cold Spring Cove, N.K.	1	-	-
Duck Cove, N. Kingstown	-	-	4
Dutch Cove, N. Kingstown	1	-	-
Dutch Harbor, Jamestown	-	-	1
East Passage	14	14	9
Fishing Cove, N. Kingstown	2	1	3
Greenwich Bay, Warwick	4	3	4
Greenwich Cove, East Greenwich	7	2	2
*Great Creek, Jamestown	1	-	-

TABLE II-1 (Con't)

<u>WATERBODY/COMMUNITY</u>	<u>1/01/75</u> <u>thru (1)</u> <u>9/30/79</u>	<u>5/16/78</u> <u>thru (1)</u> <u>9/30/79</u>	<u>11/19/79</u> <u>thru (2)</u> <u>12/31/80</u>
I. NARRAGANSETT BAY REGION/ DRAINAGE BASIN:			
*Hundred Acre Cove, Barrington	-	-	3
Kickamut River, Bristol	4	2	1
▲Mackeral Cove, Jamestown	1	-	1
Mill Cove, N. Kingstown	1	-	1
Mill Creek, N. Kingstown	1	1	2
Mt. Hope Bay, Bristol/ Portsmouth	6	2	3
Narragansett Bay (General)	52	9	25
Newport Harbor, Newport	13	4	9
North Cove, N. Kingstown	-	-	1
Occupastuxet Cove, Warwick	-	-	5
*Palmer River, Barrington	4	1	6
Pawtuxet Cove, Cranston/ Warwick	5	-	4
Pawtuxet River, Cranston	-	-	1
**Pettaquamscutt River, Narra- gansett/SK/NK	14	6	13
*Potowomut River, Warwick	1	-	-
Providence River, Prov/ War./Cranston/EP/ Barrington	18	8	3
Sakonnet River	29	9	11
Seekonk River	6	2	2

TABLE II-1 (con't)

WATER	1/01/75	5/16/78	11/19/79
<u>WATERBODY/COMMUNITY</u>	thru (1) <u>9/30/79</u>	thru (1) <u>9/30/79</u>	thru (2) <u>12/31/80</u>
Sheffield Cove, N. Kingstown	-	-	2
Smith's Cove, Barrington	3	2	-
Thatch Cove, Warwick	-	-	1
Tibbetts Creek, N. Kingstown	-	-	1
Warren River, Warren	5	3	9
Warwick Cove, Warwick	12	3	6
West Passage	10	9	16
Watchemoket Cove	-	-	1
Wickford Cove, N. Kingstown	3	1	6
Wickford Harbor, NK	7	-	1
Woonasquatucket River	<u>2</u>	<u>-</u>	<u>-</u>
 SUBTOTAL:	 268	 88	 190
PERCENT OF TOTAL:	.5929	.5866	.5621

TABLE II-1 (Con't)

<u>WATERBODY/COMMUNITY</u>	<u>1/01/75 thru (1) 9/30/79</u>	<u>5/16/78 thru (1) 9/30/79</u>	<u>11/19/79 thru (2) 12/31/80</u>
II. COASTAL PONDS:			
*Almy Pond, Newport	-	-	2
**Cormorant Cove, New Shoreham	-	-	2
*Easton Pond, Newport	-	-	1
A Galilee Bird Sanctuary Pt. Judith Pond, Narragansett	2	-	3
**Great Salt Pond, New Shoreham	1	-	1
**Green Hill Pond, SK	7	3	6
*Harbor Pond, New Shoreham	-	-	4
*Lake Canochet, Narragansett	-	-	1
*Little Pond, Narragansett	-	-	1
**New Harbor, New Shoreham	1	1	-
**Ninigret Pond	22	4	21
*Potter Pond, SK	6	2	10
**Pt. Judith Pond, Narr./SK	52	13	32
*Quicksand Pond, Little Compton	1	1	1
**Quonochontang Breachway	-	-	1
**Quonochontang Pond	2	-	5
Saugatucket River, SK	1	-	1
*Trins Pond, New Shoreham	5	3	1
**Weekapaug Breachway	-	-	1
**Winnapaug Pond	1	-	7
*Wesquage Pond, Narragansett	-	-	4
*West Pond, Charlestown	-	-	1

TABLE II-1 (Cont)

<u>WATERBODY/COMMUNITY</u>	<u>1/01/75 thru (1) 9/30/79</u>	<u>5/16/78 thru (1) 9/30/79</u>	<u>11/19/79 thru (2) 12/31/80</u>
Unnamed Pond, Newport	<u>-</u>	<u>-</u>	<u>1</u>
SUBTOTAL:	101	27	107
PERCENT OF TOTAL:	.2234	.1800	.3165

TABLE II-1 (Con't)

<u>WATERBODY/COMMUNITY</u>	1/05/75	5/16/78	11/19/79
	thru (1)	thru (1)	thru (2)
	<u>9/30/79</u>	<u>9/30/79</u>	<u>12/31/80</u>

III. COASTAL DRAINAGE BASINS/SOUNDS:

Block Island Sound	36	3	22
Col. Willie Cove, Westerly	-	-	1
Little Narragansett Bay	-	-	1
Harbor of Refuge	-	-	2
Matunnick, South Kingstown	2	1	-
Old Harbor, New Shoreham	2	-	-
Pawcatuck River, Westerly	11	7	10
Rhode Island Sound	<u>32</u>	<u>24</u>	<u>5</u>
SUBTOTAL:	83	35	41
PERCENT OF TOTAL:	.1836	.2333	.1213
TOTAL:	<u>452</u>	<u>150</u>	<u>338</u>

NOTES: (1) Whitaker and Amato, pp. 144-145. Original Source was the Division of Coastal Resources "assent file" which had a 40 percent lag behind the total numbered applications for the period. Minor counting difference of approximately 1 percent exist between totals presented here and those reported by Whitaker and Amato.

(2) Division of Coastal Resources "CRMC Assent Log" maintained by the Division's Planner. Data includes all applications put out to notice for period studied.

* RICRMP Area for Preservation and Restoration, Low Intensity/Conservation Use, Type 1 Estuary.

** RICRMP Area for Preservation and Restoration, multiple use recreation, Type 2 Estuary.

A-Area for Preservation and Restoration other than Estuary type, such as sea cliffs and large salt marshes.

TABLE II-2

TABULATED FINDINGS FOR PROJECT LOCATIONS

	(1)		(1)		(2)	
	1/01/75 thru 5/15/78		5/16/78 thru 9/30/79		11/19/79 thru 12/31/80	
	<u>No.</u>	<u>Rate</u>	<u>No.</u>	<u>Rate</u>	<u>No.</u>	<u>Rate</u>
Narragansett Bay Drainage Basin	181	.59	88	.58	199	.59
Coastal Ponds	73	.24	27	.18	96	.28
Coastal Drainage Basins/Sounds	<u>52</u>	.16	<u>37</u>	.24	<u>43</u>	.13
<u>TOTAL:</u>	<u>306</u>		<u>152</u>		<u>338</u>	
All Areas for Preservation & Restoration	103	.34	35	.23	141	.42
Low Intensity Use/ Conservation Es- turies	26	.08	8	.05	52	.15
Multiple Use Es- turies	73	.24	27	.18	89	.26
Geographic Areas of Particular Concern:						
Barrier Beaches	<u>33</u>	<u>.11</u>	<u>3</u>	<u>.02</u>	<u>24</u>	<u>.07</u>
<u>TOTAL:</u>	<u>136</u>	<u>.44</u>	<u>38</u>	<u>.25</u>	<u>165</u>	<u>.49</u>

TABLE II-2

NOTES

- (1) As measured by assents contained in the Rhode Island Department of Environmental Management, Division of Coastal Resources, "Assent File," reported by Amato and Whitaker in Coastal Society Proceedings, November 6-8, 1979, pp. 145-156. It is noteworthy that they found 40 to 50 percent fewer assents recorded than actual applications processed and concluded that this was primarily due to clerical errors and the general lag in the decision-making process. The Division's January, 1981, Staff Report to the CRMC reveals an average backlog for 1980 of 130 cases.
- (2) Tabulated from the Division of Coastal Resources Log of CRMC Permits maintained by the Staff Planner.
- (3) More accurately, this figure represents project assents reported for Block Island Sound which is predominately in a Barrier Beach status and is entirely in a "V" high-hazard flood zone. This figure does not reflect the 32 project permits along Rhode Island Sound which is also entirely a "V" high-hazard flood zone, but is less dominated by barrier beach features.

TABLE II-3

CIRC APPLICATIONS BY PROJECT TYPE AND COMMUNITY NOVEMBER 1979 - DECEMBER 1980

COMMUNITY	PERCENT OF TOTAL	AQUACULTURE	HOUSING CONTINUOUS	RESIDENTIAL FLIES, DOCKS, ETC.	COMMERCIAL FLIES, DOCKS, ETC.	SPUD/ISDS	STUDS & (L) AC- CESSORY STUDS- WORKS & RELATED WORK	ISDS REPAIRS	SEED OR BARBERS REACHES	COMMERCIAL KIDS	SEWER PROJECTS	FILL BELOW NEW OR IN WARE	FILL, GRADING, SITE WORK ABOVE NEW	STORM DRAIN OUTFALLS	TRANSPORTATION	DEDICATED	OTHER (3)
BARRINGTON	32 .10	6	6	6	3	1	10	1				1	4			1	
BRISTOL	9 .03	1	1	1	1	1	3	1				1					
CHARLESTOWN	36 .11			1		16	4		13			1	1				
CRANSTON	2 .01									1						1	
EAST GREENWICH	2 .01				1					1							
EAST PROVIDENCE	7 .02				2						1			3		1	
JANESTOWN	22 .07	1	1	7	1	6	4	1				1					
LITTLE COMPTON	2 .01	1	1														
MIDDLETON	0																
NARRAGANSETT	53 .16	4	4	4		20	5	1	1	4	6		2	1	1	4	
NEPONT	14 .04	1	1	1	4	1	2			3	1					1	
NEW SHOREHAM	10 .06				1	5	1		7	3						1	
NORTH KINGSTOWN	22 .07	3	3	3	3	4	3	1		1		1			1	2	
PANTUCKET	0																
PORTSMOUTH	12 .04	1	1	1	3	3	1						1		1		
PROVIDENCE	2 .01												1			1	
SOUTH KINGSTOWN	32 .10	3	3	3	2	14	3	2		2		2				1	
TIVESTON	1 .01															1	
WARREN	8 .02	1	1	1		1	1			1		1				2	
WARWICK	30 .09	5	5	5	1	11	1							6		1	
WESTERLY	18 .07	1	1	1	2	2	1	2	3				1	1		2	
TOTAL:	322	29	34	24	24	97	32	8	24	14	17	8	10	11	2	9	13
PERCENT BY PROJECT TYPE		.09	.11	.07	.07	.20	.13	.02	.07	.04	.03	.02	.03	.03	.01	.03	.04
CATEGORY (2)		A	A	A	A	BC	BC	BC	AG	F	F	A	B	A	F	A	9A

NOTES TO TABLE II-3

"CRMC Application by Project Type and Community, November 1979 - December 1980."

1. SFDU's reflected in this category can be for new dwellings tied into local community sewer systems, as well as for dwelling repairs, and additions, etc.
2. Categories shown are as follows: (a) Area of primary jurisdiction as reflected by 1971 statute resulted in 47 percent of the Application case load; (b) Area where primary governmental jurisdiction is clearly local, not state, resulted in 53 percent of the case load; sewers are in this category because CRMC reviews are at the project level and examine only site impacts; (c) reflects all single-family dwellings related activities and these constitute 48 percent of all the case load, the large majority of which primarily fall into local jurisdiction (BC); and (AC) reflects single-family dwelling activities on barrier beaches, an area of primary CRMC jurisdiction, representing approximately 16 percent of all activities occurring within the primary jurisdiction category.
3. These are: 1 chemical discharge into Seekonk River, East Providence; 2 private property signs on a barrier beach in Narragansett; 1 small wind-powered electrical generator; 1 power line maintenance, 1 local right-of-way rehabilitation; 1 cooling pond for the Block Island Power Company; 2 mosquito ditching projects in North Kingstown; 1 request to legalize asphalt paving on a dune;

TABLE II-4

CRMC APPLICATIONS BY PROJECT TYPE AND WATER BODY NOVEMBER 1979 - DECEMBER 1980

	TOTAL	PERCENT OF TOTAL	AQUACULTURE	EROSION CONTROL	RESIDENTIAL PIERS, DOCKS, ETC.	COMMERCIAL PIERS, DOCKS, ETC.	SPUD/ISDS	SPUDS & (1) ACCESSORY STRUCTURES & RELATED WORK	ISDS REPAIRS	SPUD ON BARRIER BEACHES	COMMERCIAL BUILDINGS	SEWER PROJECTS	FILL BELOW MHH OR IN MARSH	FILL, GRADING, SITE WORK ABOVE MHH	STORM DRAIN OUTFALLS	TRANSPORTATION	DREDGING	OTHER (1)
WATERBODIES																		
R.I. Sound	22	.07					4			16				1	1			
Dennis Harbor	1	.01						1										
Seaboard River	2	.01										1						1
Greenwich Cove	2	.01				1					1							
Green Hill Pond	6	.02			1		4	1										
Brantson Cove	1	.01									1							
Pt. Judith Pond	32	.09		6	7	1	9	3	1		3							2
Palmer River	6	.02		1	1			2					1	1				
Warwick Cove	6	.02		2			1								1			
Nashua Cove	1	.01					1											
Barnett Harbor	9	.03		1		4					2			1				1
East Passage	9	.03		1	3	1	1	1										
Easton Pond	1	.01					1											
Pawcatuck River	10	.03			2	1	2	1						1	1		1	1
Barrington River	15	.04		2	6	2	1	4										
Widgott Pond	21	.06					15	2		2			1	1				
Sabonnet River	12	.03		2		3	2	1						1		1		1
West Passage	16	.05	2	2	1		6	4				1						
Almy Pond	2	.01						1				1						
Warren River	9	.03		2	1			1			1		1	1			2	
Potter Pond	10	.03			1		4	1	2				2					
Pattagansett R.	13	.04			1		9					2				1		
Pattagansett Bay	25	.07		1	2		3	3	2			1	1	1	4		2	6
Trine Pond	1	.01						1										
Wickford Cove	6	.02				1	3											2
Oceanport Cove	3	.01					3											
Unnamed Pond	1	.01						1										
Convent Cove	2	.01					2											
Quonset Pond	3	.01			1		1	1		2								
Quonset Pond	1	.01	1															
Wampanoag Pond	7	.02		1	1				2	2								1
Sagadahoc River	1	.01									1							
Bristol Harbor	4	.01		1		1		1				1						
Greenwich Bay	4	.01		2			2											

	TOTAL	PERCENT OF TOTAL	AQUACULTURE	EROSION CONTROL	RESIDENTIAL PIERS, DOCKS, ETC.	COMMERCIAL PIERS, DOCKS, ETC.	SPDU/ISDS	SPDUS & (1) ACCES- SORY STRUCTURES & RELATED WORK	ISDS REPAIRS	SPDU ON BARRIER BEACHES	COMMERCIAL BIDS.	SEWER PROJECTS	FILL BELOW MHW OR IN MARSH	FILL, GRADING, SITE WORK ABOVE MHW	STORM DRAIN OUT- FALLS	TRANSPORTATION	DREDGING	OTHER (3)
WATER BODY																		
Appomattox Cove	1	.01		1		1												
Cal. Willie Cove	1	.01				1												
Nequeque Pond	4	.01									4						2	
Pearson Cove	4	.02					1								1			
Providence River	3	.03					1						1				1	
Pleasant Cove	3	.01			2													1
Salt Pond	1	.01			1													
Pearson River	1	.01									1							
Brush Neck Cove	2	.01				1												
R. I. Sound	5	.02	1			1	1			1			1					
Tobacco Creek	1	.01																1
Alamo Harbor	2	.01			1													1
Hill Creek	2	.02															2	
Hill Cove	1	.01															1	
Wickford Harbor	1	.01															1	
Deak Cove	4	.01					1	1									2	
Messiah Cove	2	.01																2
Ballistics Cove	3	.01			3										2			
Callow Blvd. Sanctuary	3	.01				3												
Little Narragansett Bay	1	.01			1													
100-acre Cove	3	.01	2				1											
Mc. Bays Bay	3	.01				2	1											
Base Pond	1	.01							1									
Richmond River	1	.01				1												
Thatch Cove	1	.01				1												
Wickham Cove	1	.01													1			
Sheffield Cove	2	.01					2											
Harbor of Refuge	2	.01															2	
Landry Cove	1	.01	1															
Quonsetong I.	1	.01							1									
Lake Canabot	1	.01									1							
Little Neck Pond	1	.01									1							
Nequeque I.	1	.01														1		
Barth Cove	1	.01															1	
Barth Pond	4	.01								3								1
TOTALS:	338		3	29	30	24	87	39	8	24	13	12	8	10	11	2	8	30
			.01	.09	.09	.07	.25	.12	.02	.07	.04	.04	.02	.03	.03	.01	.02	.09